

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION

4 TQ DELTA, LLC., (CAUSE NO. 2:21-CV-310-JRG
5)
6 Plaintiff, ()
7 vs. ()
8 COMMSCOPE HOLDING COMPANY, ()
9 INC., et al.,) MARSHALL, TEXAS
10 (MARCH 24, 2023
11 Defendants.) 8:00 A.M.
12

13 VOLUME 6
14

15 TRIAL ON THE MERITS
16

17 BEFORE THE HONORABLE RODNEY GILSTRAP
18 UNITED STATES CHIEF DISTRICT JUDGE
19

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THE COURT: Be seated, please.

1 Counsel, before the Court proceeds to conduct a formal
2 charge conference regarding the final jury instructions and
3 verdict form, let me inquire if there are exhibits that were
4 used during yesterday's portion of the trial that were used
5 for the first time and need to be read into the record as we
6 have this week.

7 Are there additional exhibits that need to be read into
8 the record?

9 MR. WILSON: There are, Your Honor.

10 THE COURT: Let's get that done, please.

11 MR. WILSON: Your Honor, Ty Wilson on behalf of
12 Plaintiff TQ Delta, and at trial on March 22nd, 2023, TQ Delta
13 admitted Exhibit 41 and Exhibit 118, just those two.

14 THE COURT: Any objection from Defendants?

15 MS. BEATON: No, Your Honor.

16 THE COURT: Do Defendants have a similar rendition
17 to offer?

18 MS. BEATON: Yes, Your Honor.

19 THE COURT: Please proceed.

20 MS. BEATON: Erin Beaton on behalf of CommScope.

21 Yesterday, March 23rd, 2023, Defendants admitted
22 Exhibit 59 and Exhibit 76.

23 THE COURT: All right. Any objections to that from
24 the Plaintiff?

25 MR. WILSON: There's no objections, Your Honor.

1 THE COURT: Thank you, counsel.

2 All right. That having been completed, the Court will
3 now conduct a formal charge conference regarding the final
4 jury instructions and verdict form.

5 Yesterday at the conclusion of the evidence, after the
6 Court took up and considered motions from both parties offered
7 pursuant to Rule 50(a) of the Federal Rules of Civil
8 Procedure, the Court thereafter met with counsel for the
9 parties in chambers informally and at length and had a fulsome
10 discussion regarding matters related to the final jury
11 instructions and verdict form.

12 The Court was able to get important and constructive
13 input from counsel and discuss issues related to these
14 documents in a fulsome and constructive way.

15 The Court's taken into account the input received from
16 the parties through that informal charge conference and has
17 generated what it now believes to be the proper final jury
18 instruction and verdict form to present to the jury this
19 morning.

20 Before doing that, the Court will review these on the
21 record with counsel and allow either party to lodge such
22 objections to the same as they feel are necessary and
23 appropriate.

24 Counsel, the way I have traditionally done this, for
25 those not familiar with this Court's practice, is I've asked

1 that each side send a representative to the podium. And then
2 we will begin with the final jury instructions, and I will go
3 through them page by page. And at each page I'll ask if there
4 are any objections from either party.

5 At that juncture if you believe something's been included
6 which is improper or if you believe something necessary has
7 been omitted, you may raise that objection on the record.
8 Again, we'll do this on a page-by-page basis to ensure that
9 nothing is missed or overlooked unintentionally.

10 When we've done that with the final jury instructions,
11 we'll follow the same approach with regard to the verdict
12 form.

13 So with that, whoever's going to speak for Plaintiff and
14 whoever's going to speak for Defendants, please go to the
15 podium and I'll just ask you to stay there as we go through
16 the process to save us some time of going back and forth from
17 counsel table.

18 Mr. Deane and Mr. Fink.

19 All right. Let's begin with the final jury instructions.
20 Turning to the cover page or first page of those final jury
21 instructions, is there objection here from either party?

22 MR. FINK: None from the Plaintiff, Your Honor.

23 MR. DEANE: None from the Defendant.

24 THE COURT: All right. Turning then to page 2, are
25 there any objections here from either party?

1 MR. FINK: None from the Plaintiff, Your Honor.

2 MR. DEANE: None from the Defendant, Your Honor.

3 THE COURT: Next is page 3. Are there objections
4 here?

5 MR. FINK: None from the Plaintiff, Your Honor.

6 MR. DEANE: None from the Defendant.

7 THE COURT: Next is page 4. Are there objections
8 here?

9 MR. FINK: None from the Plaintiff.

10 MR. DEANE: None from the Defendant, Your Honor.

11 THE COURT: Turning then to page 5 of the final jury
12 instructions, is there objection here from either party?

13 MR. FINK: None from the Plaintiff, Your Honor.

14 MR. DEANE: None from the Defendant.

15 THE COURT: Turning then to page 6, is there any
16 objection here?

17 MR. FINK: None from the Plaintiff.

18 MR. DEANE: None from the Defendant, Your Honor.

19 THE COURT: Next is page 7. Are there objections
20 here?

21 MR. FINK: None from the Plaintiff, Your Honor.

22 MR. DEANE: None from the Defendant.

23 THE COURT: Turning to page 8, are there objections
24 here?

25 MR. FINK: None from the Plaintiff, Your Honor.

1 MR. DEANE: None from the Defendant.

2 THE COURT: Next is page 9. Are there objections?

3 MR. FINK: None from the Plaintiff.

4 MR. DEANE: None from the Defendant, Your Honor.

5 THE COURT: Next is page 10. Are there objections
6 here?

7 MR. FINK: None from the Plaintiff, Your Honor.

8 MR. DEANE: None from the Defendant.

9 THE COURT: Turn to page 11, are there any
10 objections from either party?

11 MR. FINK: None from the Plaintiff, Your Honor.

12 MR. DEANE: None from the Defendant.

13 THE COURT: Turning next to page 12, are there any
14 objections?

15 MR. FINK: None from the Plaintiff, Your Honor.

16 MR. DEANE: None from the Defendant, Your Honor.

17 THE COURT: Next is page 13. Are there any
18 objections?

19 MR. FINK: None from the Plaintiff, Your Honor.

20 MR. DEANE: None from the Defendant.

21 THE COURT: Next is page 14. Are there any
22 objections?

23 MR. FINK: None from the Plaintiff, Your Honor.

24 MR. DEANE: None from the Defendant.

25 THE COURT: Next is page 15. Are there objections?

1 MR. FINK: None from the Plaintiff, Your Honor.

2 MR. DEANE: None from the Defendant.

3 THE COURT: Turning then to page 16. Are there
4 objections?

5 MR. FINK: None from the Plaintiff, Your Honor.

6 MR. DEANE: None from the Defendant.

7 THE COURT: Next is page 17. Are there objections
8 here?

9 MR. FINK: None from the Plaintiff, Your Honor.

10 MR. DEANE: None from the Defendant.

11 THE COURT: Next is page 18. Are there objections
12 here?

13 MR. FINK: None from the Plaintiff, Your Honor.

14 MR. DEANE: There is an objection here for the
15 Defendant, Your Honor.

16 THE COURT: State your objection.

17 MR. DEANE: In the paragraph dealing with the
18 applicable priority date of the '686 Patent, the statement
19 that TQ Delta contends that the applicable priority for the
20 '686 Patent is no later than January 7th, 2000, we object to
21 that instruction because we believe there is no evidence on
22 the record of that date, and we also believe that there is no
23 instruction that would resolve the dispute that's listed
24 there.

25 THE COURT: All right. That objection is overruled.

1 Is there anything else from either party objecting to anything
2 on page 18?

3 MR. DEANE: None from the Defendant, Your Honor.

4 THE COURT: Then we'll turn to page 19 of the final
5 jury instructions. Is there any objection here?

6 MR. FINK: None from the Plaintiff, Your Honor.

7 MR. DEANE: None from the Defendant.

8 THE COURT: Next is page 20. Are there objections
9 here?

10 MR. FINK: None from the Plaintiff, Your Honor.

11 MR. DEANE: None from the Defendant, Your Honor.

12 THE COURT: Turning then to page 21, are there
13 objections here?

14 MR. FINK: None from the Plaintiff, Your Honor.

15 MR. DEANE: None from the Defendant, Your Honor.

16 THE COURT: Turning to page 22, are there objections
17 here?

18 MR. FINK: None from the Plaintiff, Your Honor.

19 MR. DEANE: None from the Defendant, Your Honor.

20 THE COURT: Next is page 23. Are there objections
21 here?

22 MR. FINK: None from the Plaintiff, Your Honor.

23 MR. DEANE: None from the Defendant, Your Honor.

24 THE COURT: Next is page 24. Are there objections
25 here?

1 MR. FINK: None from the Plaintiff, Your Honor.

2 MR. DEANE: There is an objection here from the
3 Defendant, Your Honor.

4 THE COURT: State your objection, please.

5 MR. DEANE: Your Honor, in the paragraph that starts
6 with, The damages you award, there is a sentence that states,
7 "You must not award TQ Delta more damages than are adequate to
8 compensate for the infringement." The Defendant objects to
9 the fact that that instruction does not limit the infringement
10 to the patents-in-suit and only the patents-in-suit.

11 THE COURT: That objection's overruled. Anything
12 further on page 24?

13 MR. DEANE: None from the Defendant, Your Honor.

14 THE COURT: Let's turn next to page 25. Are there
15 objections here?

16 MR. FINK: Yes, Your Honor. From the Plaintiff, for
17 the first paragraph and the second sentence that begins, This
18 approach relies upon estimated costs, Plaintiff objects to the
19 language in that sentence and the following sentence and would
20 propose that the language be changed in the second sentence
21 to, This approach relies upon estimated costs, if any, that
22 the making, using, or selling of the accused products save.

23 And the following sentence, Plaintiff would change the
24 language to, In considering the amount of reasonable royalty
25 damages under the cost savings model, you should focus on

1 whether CommScope's making, using, or selling of the patented
2 technology avoided taking a different, more costly course of
3 action. And the rest of the sentence would stay the same.

4 So essentially that's for the second sentence striking
5 the 'allowed it to' language and changing 'avoid' to
6 'avoided'.

7 THE COURT: All right.

8 MR. FINK: Thank you.

9 THE COURT: Is that all of Plaintiff's objections,
10 Mr. Fink?

11 MR. FINK: Yes, Your Honor.

12 THE COURT: Okay. That objection is overruled.

13 Anything further from either party on page 25?

14 MR. DEANE: Yes, Your Honor. Defendant also objects
15 to the same paragraph that the Plaintiff objected to.

16 THE COURT: All right. That objection is overruled.

17 There is on this page, counsel, an unintended typo where
18 the Court has put Defendant singular. It needs to be
19 Defendants. See if I can find it.

20 MR. DEANE: Your Honor, I believe it's the second
21 line.

22 THE COURT: No. I think that's where it was, Mr.
23 Deane. I think I've already corrected it before I got out
24 here. The word Defendants on the second line should be plural
25 as there are multiple Defendants collectively referred to as

1 CommScope. But that's where it was. And as I stated, in an
2 earlier version I remember it being there, but I see that it's
3 already been corrected. So that will address that concern.

4 Anything further from either party on page 25?

5 MR. FINK: So, Your Honor, just -- just to be clear,
6 I believe what CommScope is saying, the version that the
7 parties have, that it's the defendant singular on that second
8 line?

9 THE COURT: Right.

10 MR. FINK: Okay.

11 THE COURT: This was caught after the email to you
12 and before I got out here. So that's why I've got it
13 corrected and you don't.

14 MR. FINK: Understood, Your Honor.

15 THE COURT: But it will be Defendants plural.

16 MR. FINK: No objection from Plaintiff.

17 THE COURT: All right. Let's turn to page 26 of the
18 final jury instructions. Are there any objections here from
19 either Plaintiff or Defendants?

20 MR. FINK: No objection from Plaintiff, Your Honor.

21 MR. DEANE: No objection from Defendant, Your Honor.

22 THE COURT: All right. Turning to page 27, are
23 there any objections here?

24 MR. FINK: No objection from Plaintiff, Your Honor.

25 MR. DEANE: No objection from Defendant, Your Honor.

1 THE COURT: All right. And, counsel, you'll note
2 pages 26 and 267 contain all 15 of the *Georgia Pacific*
3 factors. I gather neither party objects to the Court charging
4 this jury on all 15 factors. Is that correct?

5 MR. FINK: Plaintiff does not, Your Honor.

6 MR. DEANE: No objection from Defendant, Your Honor.

7 THE COURT: Is there any objection from either party
8 on page 27?

9 MR. FINK: No objection from Plaintiff, Your Honor.

10 MR. DEANE: No objection from Defendant.

11 THE COURT: Then we'll turn to page 28 of the final
12 jury instructions. Are there any objections here?

13 MR. FINK: No objection from Plaintiff, Your Honor.

14 MR. DEANE: No objection from Defendant.

15 THE COURT: Next is page 29. Are there any
16 objections here?

17 MR. FINK: No objection from Plaintiff, Your Honor.

18 MR. DEANE: No objection from Defendant, Your Honor.

19 THE COURT: Next then is page 30. Are there any
20 objections here?

21 MR. FINK: No objection from Plaintiff, Your Honor.

22 MR. DEANE: There is an objection from the
23 Defendant, Your Honor.

24 THE COURT: State your objection, please.

25 MR. DEANE: Your Honor, in the last full paragraph

1 where it discusses the patent expiration dates, it lists two
2 patents which are expired. The Defendant objects to the fact
3 that a third patent is not listed, which is the '686 Patent,
4 which we believe expired on October 1st, 2022.

5 THE COURT: Mr. Fink, does the Plaintiff have any
6 reason why that third patent, if in fact it has expired,
7 should not be listed there with the other two?

8 MR. FINK: Plaintiff overall has no objection to
9 listing an expiration date for the '686 Patent. I believe the
10 issue here was that the -- at least from the Plaintiff's
11 perspective, it's seeking damages from June 30, 2022. So at
12 that, the patent has yet to expire.

13 THE COURT: All right. In other words, the period
14 of time through which the evidence has been presented to the
15 jury was a period of time when this particular patent was
16 still in force.

17 MR. FINK: That's Plaintiff's understanding, Your
18 Honor.

19 THE COURT: All right. Then I'll overrule the
20 Defendants' objection.

21 All right. Anything further on page 30 from either
22 party?

23 MR. FINK: None from Plaintiff, Your Honor.

24 MR. DEANE: None from the Defendant, Your Honor.

25 THE COURT: Let's turn next to page 31. Are there

1 objections here from either party?

2 MR. FINK: None from the Plaintiff, Your Honor.

3 MR. DEANE: None from the Defendant, Your Honor.

4 THE COURT: Next is page 32. Are there any
5 objections here?

6 MR. FINK: Briefly from the Plaintiff, Your Honor.

7 For the, I guess, paragraph that begins, If you find that TQ
8 Delta has breached its contractual obligation, TQ Delta
9 objects to the instruction of compensatory damages here as it
10 does not believe that there has been evidence.

11 THE COURT: All right. That's overruled. Anything
12 further on page 32?

13 MR. FINK: None from Plaintiff, Your Honor.

14 MR. DEANE: No objection from Defendant, Your Honor.

15 THE COURT: All right. Let's turn to page 33. Are
16 there any objections here from either party?

17 MR. FINK: None from the Plaintiff, Your Honor.

18 MR. DEANE: None from the Defendant, Your Honor.

19 THE COURT: All right. Page 34, are there any
20 objections?

21 MR. FINK: None from the Plaintiff, Your Honor.

22 MR. DEANE: None from the Defendant, Your Honor.

23 THE COURT: All right. Page 35, are there any
24 objections?

25 MR. FINK: None from the Plaintiff, Your Honor.

1 MR. DEANE: None from the Defendant, Your Honor.

2 THE COURT: All right. And does page 35 represent
3 the final page in the version you gentlemen have?

4 MR. FINK: Your Honor, I have page 36 at least.

5 THE COURT: All right. I want to make sure that we
6 are looking at the same thing.

7 Are there any objections from either party on the final
8 page being page 36?

9 MR. FINK: None from the Plaintiff, Your Honor.

10 MR. DEANE: None from the Defendant, Your Honor.

11 THE COURT: All right. Thank you, counsel.

12 Let's proceed to consider the verdict form in the same
13 manner. Let's begin with that document, and we'll turn first
14 to the cover sheet or page 1. Is there any objection here
15 from either party?

16 MR. FINK: None from the Plaintiff, Your Honor.

17 MR. DEANE: None from the Defendant, Your Honor.

18 THE COURT: Turning to page 2 where various
19 definitions are set forward, are there any objections?

20 MR. FINK: None from the Plaintiff, Your Honor.

21 MR. DEANE: None from the Defendant, Your Honor.

22 THE COURT: Page 3 where various instructions to the
23 jury are included, are there any objections?

24 MR. FINK: None from the Plaintiff, Your Honor.

25 MR. DEANE: None from the Defendant, Your Honor.

1 THE COURT: Turning, then, to page 4 where Question
2 is found, are there any objections?

3 MR. FINK: None from the Plaintiff, Your Honor.

4 MR. DEANE: None from the Defendant, Your Honor.

5 THE COURT: Turning to page 5 where Question 2 is
6 found, are there any objections?

7 MR. FINK: None from the Plaintiff, Your Honor.

8 MR. DEANE: None from the Defendant, Your Honor.

9 THE COURT: Turning, then, to page 6 where Question
10 3 is found, are there any objections?

11 MR. FINK: None from the Plaintiff, Your Honor.

12 MR. DEANE: None from the Defendant, Your Honor.

13 THE COURT: Turning to page 7 where Questions 4A and
14 4B are found, are there any objections?

15 MR. FINK: None from the Plaintiff, Your Honor.

16 MR. DEANE: Your Honor, the Defendant has an
17 objection.

18 THE COURT: State your objection.

19 MR. DEANE: For Question No. 4A, Defendant objects
20 to the fact that the request to the jury is not split out
21 between induced infringement and direct infringement.

22 THE COURT: All right. That objection's overruled.

23 Anything further on page 7?

24 MR. DEANE: None from the Defendant, Your Honor.

25 THE COURT: Then we'll turn to page 8 of the verdict

1 form where Questions 5 and 6 are found. Are there objections
2 here from either party?

3 MR. FINK: Briefly, Your Honor. Plaintiff objects
4 that the inclusion of a blank for compensation of damages on
5 breach of contract, which it does not believe have been proven
6 in any way.

7 THE COURT: All right. That objection's overruled.

8 Anything further?

9 MR. FINK: None from the Plaintiff, Your Honor.

10 MR. DEANE: None from the Defendant, Your Honor.

11 THE COURT: Thank you.

12 We'll turn to page 9, which is the final page of verdict
13 form. Are there any objections here from either party?

14 MR. FINK: Oh, sorry, Your Honor. May I briefly --
15 we had another objection on page 8. I'm sorry.

16 THE COURT: All right. Just for completeness, let's
17 turn to page 8.

18 What was your additional objection, Mr. Fink?

19 MR. FINK: For Question 5, Your Honor, Plaintiff
20 also objects that the statement of the contractual duty should
21 be a contractual duty to grant licenses regarding its standard
22 essential patents to CommScope on a worldwide reasonable and
23 non-discriminatory basis, not a -- yeah. CommScope--sorry--TQ
24 Delta does not believe that the obligation was specifically
25 United States; that it was for a worldwide basis only.

1 THE COURT: All right. And the question does not,
2 as you can see, identify either on a U.S. or a worldwide
3 basis. It's silent on that.

4 MR. FINK: Yes, Your Honor.

5 THE COURT: Okay. All right. Your objection's
6 overruled.

7 Anything else from either party on any of the provisions
8 in the verdict form?

9 MR. FINK: None from Plaintiff, Your Honor.

10 MR. DEANE: None from Defendant, Your Honor.

11 THE COURT: All right. Thank you, counsel.

12 That will complete the formal charge conference. As I
13 indicated to you yesterday, I'll now produce eight printed
14 copies of the final jury instructions and one clean copy of
15 the verdict form, which I intend to send back to the jury
16 after my instructions are complete and closing arguments have
17 been heard.

18 Now that we are at this point, Mr. Davis, can you confirm
19 that you will be presenting the entirety of Plaintiff's
20 closing arguments?

21 MR. DAVIS: Yes, Your Honor.

22 THE COURT: All right. Mr. Barton or Mr. Dacus,
23 either one, who will be presenting arguments for Defendants?

24 MR. DACUS: I will be, Your Honor.

25 THE COURT: All right. You're not going to split

1 your time with co-counsel.

2 MR. DACUS: That's correct.

3 THE COURT: All right. Is there anything else from
4 either party before I recess?

5 When I come back in, I'll be prepared to bring in the
6 jury and begin with the Court's final jury instructions.

7 Anything further from Plaintiff?

8 MR. DAVIS: No, Your Honor.

9 THE COURT: Anything further from Defendants?

10 MR. DACUS: No, Your Honor.

11 THE COURT: Let me just simply say this while I have
12 you in the room without the presence of the jury. The Court
13 considers that its final instructions to the jury and
14 counsel's closing arguments are the most serious part of a
15 very serious process. Therefore, I do not want any
16 distractions or interruptions. If you have a device, make
17 sure it is either out of this room or there is no physical way
18 it could make noise. If you have something to say to someone
19 sitting next to you in the gallery, say it now. I don't want
20 whispering, I don't want talking, I don't want moving, I don't
21 want papers being rustled or passed back and forth. I want
22 you to be still, quiet, and respectful throughout the entire
23 process.

24 Does anybody have any questions about what the Court's
25 expectations are? I don't see any, so you are now on

1 appropriate notice.

2 Thank you, counsel. I'll be back shortly. Until then,
3 the Court stands in recess.

4 (Brief recess.)

5 THE COURT: Be seated, please.

6 Counsel, is there anything from either party before I
7 bring in the jury and proceed with the Court's final
8 instructions?

9 MR. DAVIS: No, Your Honor.

10 MR. DACUS: No, Your Honor.

11 THE COURT: All right. Let's bring in the jury,
12 please.

13 (Whereupon, the jury entered the courtroom.)

14 THE COURT: Good morning, ladies and gentlemen.
15 Welcome back. Please have a seat.

16 Ladies and gentlemen of the jury, you have now heard all
17 the evidence in this case, and I'll now instruct you on the
18 law that you must apply.

19 I want you to understand that, when you retire to the
20 jury room, I'm going to send back for each of you your own
21 individual printed copy of these final instructions that I'm
22 about to give you orally. So you can make notes if you'd like
23 to, but you're going to have your own written copy to refer to
24 and, quite honestly, I'd prefer you pay attention to my oral
25 instructions and listen carefully knowing that you'll have

1 your own copy to look at when you retire.

2 It's your duty to follow the law as I give it to you. On
3 the other hand, and as I've said, you, the jury, are the sole
4 judges of the facts in this case. Do not consider any
5 statement that I have made over the course of the trial or
6 make in the course of these instructions as an indication that
7 I have any opinion about the facts in this case.

8 Now, you're about to hear closing arguments from the
9 attorneys for the competing parties. Statements and arguments
10 of the attorneys, ladies and gentlemen, are not evidence, and
11 they are not instructions on the law. They are intended only
12 to assist you, the jury, in understanding the evidence and the
13 parties' competing contentions.

14 A verdict form has been prepared for you. You will take
15 this form with you to the jury room. And when you've reached
16 a unanimous agreement as to your verdict, you will have your
17 foreperson fill in the blanks in the verdict form reflecting
18 that unanimous agreement, then have it signed, dated by the
19 foreperson, and then notify the Court Security Officer that
20 you've reached a verdict.

21 Answer the questions in the verdict form from the facts
22 as you find them to be. Do not decide who you think should
23 win this case and then answer the questions to reach that
24 result. Again, your answers and your verdict must be
25 unanimous.

1 Now, in determining whether any fact has been proven in
2 this case, you may, unless otherwise instructed, consider the
3 testimony of all the witnesses, regardless of who may have
4 called them, and the stipulations of the parties as entered
5 into. You may also consider all of the exhibits received and
6 admitted into evidence regardless of who introduced those
7 exhibits.

8 You, the jury, are the sole judges of the credibility of
9 all the witnesses and the weight and effect to give to all the
10 evidence. In deciding the facts in this case, you may have to
11 decide which testimony to believe and which testimony not to
12 believe. You alone are to determine the questions of
13 credibility or truthfulness of the witnesses.

14 And in weighing the testimony of the witnesses, you may
15 consider the witness' manner and demeanor on the witness
16 stand, any feelings or interest they may have in the case and
17 its outcome, any prejudice or bias about the case that the
18 witness may have, and the consistency or inconsistency of
19 their testimony, considered in the light of the circumstances.

20 Has the witness been contradicted by other evidence? Has
21 he or she made statements at other times and in other places
22 contrary to what they said from the witness stand? You,
23 ladies and gentlemen, must give the testimony of each witness
24 the amount of credibility and weight that you think it
25 deserves.

1 You should also keep in mind that a simple mistake does
2 not mean that the witness is not telling the truth. You must
3 consider whether any misstatement was an intentional falsehood
4 or a simple lapse in memory, and what significance should be
5 attached to that testimony.

6 Now, as I've told you previously, the attorneys in this
7 case are advocates for the competing parties, and they have a
8 duty to object when they believe evidence is offered that
9 should not be admitted under the rules of the Court.

10 When the Court sustained an objection to a question
11 addressed to a witness, you must disregard that question
12 entirely, and you may draw no inference from its wording or
13 speculate about what the witness would have said if the Court
14 had allowed them to answer the question.

15 On the other hand, if an objection was overruled, then
16 you should treat the answer to the question and the question
17 just as if no objection had been made in the first place. By
18 allowing the testimony or other evidence to be introduced over
19 the objection of an attorney, the Court did not indicate any
20 opinion as to the weight or effect of that evidence. Again,
21 that is your responsibility.

22 Now, at various times during the course of the trial, it
23 was necessary for the Court to talk to the lawyers outside of
24 your hearing either here at the bench or by calling a recess
25 and talking to them when you were outside of the courtroom.

1 This happens, ladies and gentlemen, because often during
2 trials there are things that arise that do not involve the
3 jury. You should not speculate or guess about what was said
4 during these discussions that took place outside of your
5 presence.

6 Now, there are two types of evidence that you may
7 consider in properly finding the truth as to the facts in this
8 case. One is direct evidence, such as the testimony of an
9 eyewitness. Now, the other is called indirect or
10 circumstantial evidence, that is, the proof of a chain of
11 circumstances that indicates the existence or non-existence of
12 certain other facts. As a general rule, the law makes no
13 distinction between direct evidence or indirect and
14 circumstantial evidence, but simply requires that you find the
15 facts based on all the evidence that's been presented during
16 the course of the trial.

17 Now, the parties may have stipulated or agreed to some of
18 the facts in this case. And when the lawyers for both sides
19 stipulate as to the existence of a fact, then you must, unless
20 otherwise instructed, accept the stipulation as evidence and
21 consider the fact as proven. The parties in this case have
22 stipulated to the following facts:

23 1. Plaintiff TQ Delta, LLC, file its complaint in this
24 case on August the 13th, 2021, alleging that the Defendants
25 infringe certain claims of the patents-in-suit. There are

1 seven patents-in-suit. U.S. Patent No. 7,570,686, which
2 you've heard referred to throughout the trial as the '686
3 Patent; U.S. Patent No. 7,453,881, which you've heard referred
4 to as the '881 Patent; U.S. Patent No. 8,276,048, which you've
5 heard referred to as the '048 Patent; Patent No. 8,090,008,
6 which you've heard referred to as the '008, or the double-0
7 patent I think it was called at least once; U.S. Patent No.
8 8,462,835, which you've heard referred to as the 8-3-5 Patent
9 or the '835 Patent; U.S. Patent No. 8,468,411, which you've
10 heard referred to as the '411 Patent; and U.S. Patent No.
11 9,154,356 [sic] which you've heard referred to -- excuse me.
12 Patent No. 9,154,354, which you've heard referred to as the
13 '354 Patent. And these patents have been referred to as the
14 patents-in-suit and also as the asserted patents.

15 Stipulation No. 2. Plaintiff TQ Delta owns all rights
16 necessary to bring this action for the patents-in-suit.

17 3. Plaintiff TQ Delta is a limited liability company
18 organized and existing under the laws of the state of
19 Delaware, having its principal place of business at 900 South
20 Capital of Texas Highway, Suite 150, Austin, Texas, 78746.

21 4. Defendant CommScope Holding Company, Inc., is a
22 corporation organized and existing under the laws of the state
23 of Delaware.

24 5. Defendant CommScope, Inc., is a corporation organized
25 and existing under the laws of the state of Delaware.

1 CommScope, Inc., is a wholly-owned subsidiary of CommScope
2 Holding Company, Inc.

3 6. Defendant CommScope Holding Company, Inc., acquired
4 Defendants ARRIS Solutions, Inc., ARRIS Technology, Inc., and
5 ARRIS Enterprises, LLC, in 2019.

6 7. Defendant ARRIS U.S. Holdings, Inc., is a corporation
7 organized and existing under the laws of the state of
8 Delaware. ARRIS U.S. Holdings, Inc., is a subsidiary of ARRIS
9 International, Limited.

10 8. Defendant ARRIS Solutions, Inc., is a corporation
11 organized and existing under the laws of the state of
12 Delaware. ARRIS Solutions, Inc., is a subsidiary of ARRIS
13 U.S. Holdings, Inc.

14 9. Defendant ARRIS Technology, Inc., is a corporation
15 duly organized and existing under the laws of the state of
16 Delaware. ARRIS Technology, Inc., is a subsidiary of ARRIS
17 Solutions, Inc.

18 10. Defendant ARRIS Enterprises, LLC, is a corporation
19 organized and existing under the laws of the state of
20 Delaware. ARRIS Enterprises, LLC, is a subsidiary of ARRIS
21 Solutions, Inc.

22 11. ARRIS International, Limited, ARRIS Global, Limited,
23 ARRIS U.S. Holdings, Inc., ARRIS Solutions, Inc., ARRIS
24 Technology, Inc., and ARRIS Enterprises, LLC, maintain a
25 regular and established place of business at 4516 Seton Center

1 Parkway, Austin, Texas, 78659-5370, and/or at 5300 Hollister
2 Street, Houston, Texas, 77040.

3 12. CommScope Holding Company, Inc., and CommScope,
4 Inc., maintain a regular and established place of business at
5 2601 Telecom Parkway, Richardson, Texas, 70852.

6 13. On April the 4th, 2019, CommScope Holding Company,
7 Inc., acquired ARRIS International, Limited, becoming its
8 parent company. Prior to CommScope Holding Company, Inc.'s,
9 acquisition of ARRIS International, Limited, ARRIS
10 International, Limited, acquired 2Wire, Inc.

11 14. The priority dates for some of the patents-in-suit
12 are as follows: October the 5th, 2021, for the '881 Patent;
13 October the 12th, 2004, for the '048 Patent; November the 9th,
14 1999, for the '008 Patent; March the 3rd, 2004, for the '835
15 Patent; April the 12th, 2006, for the '411 Patent; and April
16 the 18th, 2000, for the '354 Patent.

17 15. The '686 Patent, the '881 Patent, the '008 Patent,
18 the '835 Patent, and the '354 Patent are subject to
19 commitments with the International Telecommunications Union,
20 which you've heard to referred to as the ITU. These patents
21 are often referred to as standard essential patents, or SEPs.
22 The '048 Patent and the '411 Patent are not standard essential
23 patents and are not subject to the commitments to the ITU.

24 Now, certain testimony has been presented to you, ladies
25 and gentlemen, during the course of this trial through

1 depositions. A deposition is the sworn recorded answers to
2 questions asked to a witness in advance of the trial. If a
3 witness cannot be present to testify in person during the
4 trial, then the witness' testimony may be presented under oath
5 to the jury in the form of a deposition.

6 Before this trial began, the attorneys representing the
7 parties in this case questioned these deposition witnesses
8 under oath. At that time a court reporter was present and
9 recorded their sworn testimony.

10 Deposition testimony is entitled to the same
11 consideration by you as testimony given by a witness in person
12 from the witness stand in open court. Accordingly, ladies and
13 gentlemen, you should judge the credibility and importance of
14 deposition testimony to the best of your ability just as if
15 the witness had testified to you from the witness stand in
16 open court.

17 Now, while you should consider only the evidence in this
18 case, you are permitted to draw such reasonable inferences
19 from the testimony and the exhibits as you feel are justified
20 in the light of common experience. Said another way, you may
21 make deductions and reach conclusions that reason and common
22 sense lead you to draw from the facts that have been
23 established by the testimony and the evidence in this case.
24 However, you should not base your decision on any evidence not
25 presented by the parties during the case, including your own

1 personal experience with any of the products that are at issue
2 in this case.

3 Now, unless I instruct you otherwise, you may properly
4 determine that the testimony of a single witness is sufficient
5 to prove any fact, even if a greater number of witnesses may
6 have testified to the contrary if, after considering all the
7 evidence, you believe that single witness.

8 Also, when knowledge of a technical subject may be
9 helpful to the jury, a person who has special training or
10 experience in that technical field--we call them an expert
11 witness--is permitted to state his or her opinions on those
12 technical matters. However, ladies and gentlemen, you are not
13 required to accept those opinions. As with any other witness,
14 it is solely up to you whether or not to rely upon the
15 testimony that's given.

16 Now, certain exhibits have been shown to you during the
17 trial that were illustrations. We call these type of exhibits
18 demonstrative exhibits or simply demonstratives.

19 Demonstrative exhibits are a party's depiction, picture, or
20 model describing something involved in the trial. If your
21 recollection of the evidence differs from the demonstratives,
22 then you should rely on your recollection.

23 Demonstrative exhibits are sometimes called jury aids.
24 Demonstrative exhibits, ladies and gentlemen, are not
25 evidence, but a witness' testimony concerning a demonstrative

1 exhibit is evidence. Demonstrative exhibits will not be
2 available to you to review or consider during your
3 deliberations.

4 Now, in any legal action, facts must be proven by a
5 required amount of evidence known as the burden of proof. The
6 burden of proof in this case is on the Plaintiff for some
7 issues and on the Defendants for other issues. And there are
8 two burdens of proof that you will apply in this case. One is
9 the preponderance of the evidence; the other is clear and
10 convincing evidence.

11 The Plaintiff in this case, TQ Delta, which I'll refer to
12 as the Plaintiff, technically their complete name is TQ Delta,
13 LLC, you've heard them referred to as the Plaintiff. You've
14 also heard them referred to simply as TQ Delta.

15 The Plaintiff has the burden of proving patent
16 infringement by a preponderance of the evidence. TQ Delta
17 also has the burden of proving that CommScope has actively
18 induced others to infringe the asserted patents by a
19 preponderance of the evidence. TQ Delta also has the burden
20 of proving willful patent infringement by a preponderance of
21 the evidence, and TQ Delta also has the burden of proving
22 damages for any patent infringement by a preponderance of the
23 evidence.

24 A preponderance of the evidence, let me remind you, means
25 evidence that persuades you that a claim is more probably true

1 than not true. Sometimes this is talked about as being the
2 greater weight and degree of credible testimony.

3 The Defendants in this case, CommScope Holding Company,
4 Inc., CommScope, Inc., ARRIS International, Limited, ARRIS
5 Global, Limited, ARRIS U.S. Holdings, Inc., ARRIS Solutions,
6 Inc., ARRIS Technology, Inc., and ARRIS Enterprises, LLC,
7 which I'll refer to collectively as the Defendants or
8 collectively as simply CommScope, have the burden of proving
9 by a preponderance of the evidence that TQ Delta breached its
10 contract with the ITU to grant licenses to standard essential
11 patents held by TQ Delta on fair, reasonable, and
12 non-discriminatory, as you heard it called FRAND, terms and
13 conditions.

14 Commscope also has the burden of proving invalidity as to
15 the challenged TQ Delta patent claims by clear and convincing
16 evidence.

17 Clear and convincing evidence, ladies and gentlemen,
18 means evidence that produces, in your mind, an abiding
19 conviction that the truth of the party's factual contentions
20 are highly probable. Although proof to an absolute certainty
21 is not required, clear and convincing evidence requires a
22 greater degree of persuasion than is necessary for the
23 preponderance of the evidence standard. If proof establishes,
24 in your mind, an abiding conviction in the truth of the
25 matter, then the clear and convincing evidence standard has

1 been met.

2 Now, as I previously told you, ladies and gentlemen,
3 these two burdens of proof are not to be confused with a
4 different and a third burden of proof known as beyond a
5 reasonable doubt, which is the burden of proof applied in a
6 criminal case, and as I told you, it has no application in a
7 civil case like this whatsoever. Beyond a reasonable doubt is
8 a higher burden of proof or standard of proof than the
9 preponderance of the evidence and is a higher standard of
10 proof than clear and convincing evidence.

11 Now, as I did at the beginning of the case, I'm going to
12 first give you a summary of each side's contentions. I'll
13 then provide you with detailed instructions on what each side
14 must prove in order to win on each of its contentions.

15 As I have previously advised you, this is an action for
16 patent infringement. TQ Delta, the Plaintiff, contends that
17 CommScope, the Defendants, infringe certain claims of the
18 patents-in-suit. Remember, there are seven patents-in-suit:
19 the '686 Patent, the '881 Patent, the '048 Patent, the '008
20 Patent, the '835 Patent, the '411 Patent, and the '354 Patent.

21 The Plaintiff, TQ Delta, contends that the Defendants,
22 CommScope, infringe the following claims of the
23 patents-in-suit: Claim 36 of the '686 Patent, claim 17 of the
24 '881 Patent, claim 5 of the '048 Patent, claim 14 of the '008
25 Patent, claim 10 of the '835 Patent, claim 18 of the '411

1 Patent, and claim 10 of the '354 Patent. These are the
2 asserted claims.

3 TQ Delta contends that CommScope has infringed the
4 asserted claims by making, using, selling, importing, or
5 offering for sale the 5031, the 5168, the 5268, the BGW210,
6 the NVG589, the NVG599, and the NVG44X, which I'll refer to as
7 the accused products.

8 TQ Delta also contends that CommScope has actively
9 induced others to infringe the asserted patents.

10 TQ Delta further alleges that CommScope's infringement of
11 the patents asserted was willful.

12 TQ Delta contends that it is entitled to money damages in
13 the form of a reasonable royalty for CommScope's infringement.

14 And TQ Delta has the burden to prove these issues by a
15 preponderance of the evidence.

16 On the other hand, the Defendants, CommScope, deny that
17 they infringe any of the asserted claims of the
18 patents-in-suit. CommScope denies that it makes, uses, offers
19 for sale, sells, or imports any of the accused products that
20 infringe any of the asserted claims. CommScope also denies
21 that it has induced others to infringe the asserted patents.
22 CommScope also denies that any alleged infringement was
23 willful. And CommScope denies that it owes TQ Delta any money
24 damages.

25 CommScope also contends that all of the asserted claims

1 of the patents-in-suit are invalid as being obvious in light
2 of the prior art. Invalidity is a defense to infringement,
3 and CommScope has the burden to prove invalidity by clear and
4 convincing evidence.

5 Let me take one minute, ladies and gentlemen.

6 (Pause in proceedings.)

7 THE COURT: Let me correct something. CommScope
8 contends that four of the seven patents-in-suit are invalid as
9 being obvious in the light of prior art. CommScope contends
10 that the '686 Patent, the '008 Patent, the '048 Patent, and
11 the '835 Patent are invalid as being obvious in the light of
12 prior art. The other three patents are not challenged as
13 being invalid by the Defendants CommScope.

14 Commscope also alleges that the '008 Patent and the '835
15 Patent are invalid as being anticipated by the prior art.

16 Now, invalidity and infringement, ladies and gentlemen,
17 are separate and distinct issues, and your job is to decide
18 whether CommScope has infringed any of the asserted claims of
19 the patents-in-suit and whether those claims are invalid.

20 If you decide that any asserted claim has been infringed
21 and is not invalid, then you'll need to decide the amount of
22 money damages, if any, to be awarded to TQ Delta to compensate
23 it for that infringement. If you decide that there was any
24 infringement and it was willful, that decision as to
25 willfulness should not affect your damages or any award that

1 you make in this case, and I will take willfulness into
2 account later, if you find it.

3 CommScope further contends that TQ Delta has breached its
4 commitment to the ITU by failing to offer to CommScope a
5 license to TQ Delta's standard essential patents on fair,
6 reasonable, and non-discriminatory terms. These terms and
7 conditions are sometimes referred to as RAND, R-A-N-D,
8 commitments, you've heard them referred to as FRAND,
9 F-R-A-N-D, commitments. And as I've previously instructed you
10 FRAND and RAND have been used interchangeably throughout this
11 trial, and for purposes of this trial you should consider them
12 to be the same.

13 Commscope also alleges that CommScope is entitled to
14 damages as a result of TQ Delta's breach of contract.

15 CommScope has the burden to prove that TQ Delta breached its
16 FRAND obligation by a preponderance of the evidence.

17 Now, before you can decide many of the issues in this
18 case, you'll first need to understand the role of the patent
19 claims. The patent claims, ladies and gentlemen, are those
20 numbered sentences at the end of each patent. The claims are
21 important because it's the words of the claims that define
22 what a patent covers.

23 The figures in the patent, the text in the patent, the
24 rest of the patent provides a description and/or examples of
25 the invention and it provides a context for the claims, but it

1 is the claims themselves that define the breadth of the
2 patent's coverage. Each claim is effectively treated as if it
3 were a separate patent, and each claim may cover more or cover
4 less than another claim. As a result, what a patent covers
5 depends, in turn, upon what each of its claims covers.

6 Now, you'll first need to understand what each claim
7 covers in order to decide whether or not there is infringement
8 of that claim and to decide whether or not the claim is
9 invalid. The law says that it's my role to define the terms
10 of the claims and it's your role to apply my definitions to
11 the issues that you are asked to decide in this case.

12 Therefore, and as I've explained to you at the beginning
13 of the case, I've already determined the meaning of certain
14 language from the claims, and I've provided my definitions to
15 you in your juror notebooks, and you are to accept and use my
16 definitions of this language from the claims as being correct.
17 It's your job to take these definitions and apply them to the
18 issues that you're deciding, the issues of infringement and
19 invalidity.

20 Now, you should disregard any evidence presented at trial
21 that contradicts or is inconsistent with the constructions and
22 the definitions that I have given you. For claim limitations
23 or language that I have not expressly construed--that is,
24 limitations that I have not interpreted or defined--you're to
25 apply and use the plain and ordinary meaning of that language

1 as understood by one of ordinary skill in the art, which is to
2 say, in the field of the technology of the patent at the time
3 of the alleged invention.

4 Now, the meaning of the words of the patent claims must
5 be the same when deciding both the issues of infringement and
6 the issue of validity. As I say, you've been provided copies
7 of the asserted patents, all seven of them, in your juror
8 notebooks, and you may use them and refer to them throughout
9 your deliberations.

10 Now, several times in these instructions I have referred
11 to and will refer to a person of ordinary skill in the field
12 of the invention, or a person of ordinary ordinary skill in
13 the art. It's up to you to decide the level of ordinary skill
14 in the field of the technology of the patent and what it is.

15 In deciding this, you should consider all the evidence
16 introduced at trial, including but not limited to: (1) the
17 levels of education and experience of the inventor and other
18 persons actively working in the field; (2) the types of
19 problems encountered in the field; (3) prior art solutions to
20 those problems; (4) the rapidity with which innovations are
21 made; and (5) the sophistication of the technology.

22 The claims are intended to define in words the boundaries
23 of the inventor's rights. Only the claims of a patent can be
24 infringed, ladies and gentlemen. Neither the written
25 description nor the drawings of a patent can be infringed.

1 Each claim must be considered individually.

2 Now I'll explain to you what a claim defines -- how a
3 claim defines what it covers.

4 A claim sets forth, in words, a set of requirements.

5 Each claim sets forth its requirements in a single sentence.

6 If a product satisfies each of these requirements, then it is
7 covered by that claim.

8 There can be several claims in a patent. Each claim may
9 be narrower or broader than another claim by setting forth
10 more or fewer requirements. The coverage of a patent is
11 assessed on a claim-by-claim basis. And in patent law, the
12 requirements of a claim are often referred to as the claim
13 elements. They're often referred to also as the claim
14 limitations.

15 When a product meets all the requirements of a claim, the
16 claim is said to cover that product, and that product is said
17 to fall within the scope of that claim. In other words, a
18 claim covers a product where each of the claim elements or
19 limitations is present in that product. If a product is
20 missing even one limitation or element of a claim, the product
21 is not covered by the claim. And if a product is not covered
22 by the claim, the product cannot infringe the claim.

23 Now, the beginning portion, or preamble, of a claim often
24 uses the word 'comprising'. The word 'comprising', when used
25 in the preamble of a claim, means including but not limited

1 to, or containing but not limited to. When comprising is used
2 in the preamble, if you decide that an accused product
3 includes all of the requirements of that claim, that claim is
4 infringed. And that is true even if the accused product
5 contains other additional elements.

6 Take, for example, a claim to a table comprising a
7 tabletop, legs, and glue. It would be infringed by any table
8 that includes a tabletop, legs, and glue even if that table
9 also contains other things such as leaves to expand the size
10 of the table or wheels to go on the ends of the legs.

11 Now, this case involves two types of patent claims:
12 independent claims and dependent claims. In this case, claim
13 36 of the '686 Patent, claim 17 of the '881 Patent, claim 5 of
14 the '048 Patent, claim 14 of the '008 Patent, claim 18 of the
15 '411 Patent, and claim 10 of the '354 Patent are independent
16 claims. Claim 10 of the '835 Patent is a dependent claim.

17 An independent claim, ladies and gentlemen, sets forth
18 all the requirements that must be met in order to be covered
19 by that claim. It's not necessary to look to any other claim
20 in the patent to determine what an independent claim covers.

21 On the other hand, a dependent claim does not itself
22 recite all the requirements of the claim, but refers to
23 another claim for some of its requirements. In this way the
24 claim depends from another claim.

25 A dependent claim incorporates all the requirements of

1 the claim to which it refers or, as we say, from which it
2 depends as well as all of its original limitations. So to
3 determine what a dependent claim covers, it's necessary to
4 look at both the dependent claim and any other claim to which
5 it refers or from which it depends. A product that meets all
6 the requirements of both the dependent claim and the claim to
7 which it refers or depends or from which it depends is covered
8 by that dependent claim.

9 Now, if a person or corporation makes, uses, sells, or
10 offers to sell within the United States, or imports into the
11 United States what is covered by a patent claim without the
12 patent holder's permission, that person or corporation is said
13 to infringe the patent.

14 In reaching your decision on infringement, keep in mind
15 that only the claims of the patent can be infringed, and you
16 must compare the asserted claims as I have construed them for
17 you to the accused products to determine whether or not there
18 is infringement. This is the only correct comparison, the
19 asserted claims compared to the accused products.

20 Now, you should not compare the accused product with any
21 specific examples set out in the patent or with the prior art.
22 In deciding infringement, the only correct comparison is
23 between the accused products and the elements or limitations
24 of the claim that is asserted as the Court has construed them
25 for you.

1 You must reach your decision on each assertion of
2 infringement based on my instructions about the meaning and
3 scope of the claims, the legal requirements for infringement,
4 and the evidence presented to you by both of the competing
5 parties in this case.

6 I'll now instruct you about the specific rules that you
7 must follow to determine whether the Plaintiff TQ Delta has
8 proven that CommScope, the Defendants, have directly infringed
9 one or more of the asserted claims involved in this case.

10 A patent can be directly infringed even if the alleged
11 direct infringer did not have knowledge of the patent and
12 without the direct infringer knowing that what it did was
13 infringement of a claim. A patent may also be directly
14 infringed even though the accused direct infringer believed in
15 good faith that what it did was not infringement of the
16 patent.

17 You must determine, separately for each asserted claim,
18 whether or not there is or is not infringement. And in order
19 to prove direct infringement of an asserted claim, TQ Delta,
20 the Plaintiff, must prove by a preponderance of the evidence
21 that an accused product includes each and every limitation or
22 element of the claim.

23 In determining whether the accused product directly
24 infringes an asserted claim in this case, you must compare an
25 accused product with each and every one of the requirements or

1 limitations of that claim to determine whether that accused
2 product contains each and every requirement or limitation
3 recited in the claim. An accused product infringes a claim if
4 it satisfies all the claim elements, even though it may also
5 be capable of non-infringing modes of operation.

6 However, if you find that an independent claim on which
7 another claim depends is not infringed, there cannot be
8 infringement of any dependent claim that refers directly or
9 indirectly to that independent claim.

10 And on the other hand, if you find that an independent
11 claim has been infringed, you must still decide separately
12 whether the product meets the additional requirements of any
13 claims that depend from that independent claim--that is,
14 whether those claims have also been infringed. A dependent
15 claim includes all the requirements of any of the claims to
16 which it refers or from which it depends, plus the additional
17 requirements of its own.

18 Now, a claim requirement is literally present if it
19 exists in an accused product just as it has been described in
20 the claim language, either as I have explained or construed
21 that language to you, or if I did not explain it, as it would
22 have been understood by its plain and ordinary meaning to a
23 person of ordinary skill in the art. If an accused product
24 omits any element recited in a claim, then you must find that
25 the accused product in question does not literally infringe

1 that claim.

2 So long as an accused product has each and every one of
3 the claim elements, infringement of that claim is shown, even
4 if the product contains additional features or elements not
5 required by the claims.

6 In this case, TQ Delta has also accused CommScope of
7 indirect infringement by actively inducing others to directly
8 infringe the asserted claims of the asserted patents. As with
9 direct infringement, ladies and gentlemen, you must determine
10 whether there has been active inducement on a claim-by-claim
11 basis.

12 CommScope is liable for induced infringement of a claim
13 only if TQ Delta proves by a preponderance of the evidence
14 that:

15 1. The acts have been carried out by CommScope's
16 customers that directly infringe that claim;

17 2. CommScope has taken action during the time the
18 asserted patents were in force, intending to cause the
19 infringing acts to be carried out by its customers; and,

20 3. CommScope has been aware of the asserted patents and
21 has known that the acts of its customers constitute
22 infringement of the asserted patents, or CommScope was
23 willfully blind to that infringement.

24 Willful blindness, ladies and gentlemen, is established
25 if CommScope believed that there was a high probability that

1 the acts, if taken, would constitute infringement of the
2 asserted claims, but it deliberately avoided confirming that
3 belief.

4 To establish induced infringement, it's not sufficient
5 that someone else directly infringes the claim, nor is it
6 sufficient that the company accused of inducing another's
7 direct infringement merely had knowledge or notice of an
8 asserted patent or had been aware of the acts by another that
9 allegedly constitute direct infringement.

10 Further, the mere fact that the company accused of
11 inducing another's direct infringement had known or should
12 have known that there was a substantial risk that someone
13 else's acts would infringe is not sufficient. Rather, in
14 order to find inducement, you must find that CommScope
15 specifically intended or was willfully blind to that
16 infringement.

17 Now, TQ Delta also contends that CommScope has willfully
18 infringed the asserted claims of the patents-in-suit. If you
19 decide that CommScope has infringed a valid claim, then you
20 must go on and address the issue of whether or not that
21 infringement was willful. TQ Delta has the burden of proving
22 willful infringement by a preponderance of the evidence.

23 You may not determine that the infringement was willful
24 just because CommScope knew of the asserted patents and
25 infringed them. You may find that CommScope willfully

1 infringed if you find that CommScope deliberately or
2 intentionally infringed the asserted patents.

3 You may find that CommScope's actions were willful if
4 CommScope acted in reckless or callous disregard of or with
5 indifference to the rights of TQ Delta. A defendant is
6 indifferent to the rights of another when it proceeds in
7 disregard of a high or excessive danger of infringement that
8 is known to it or that would have been apparent to a
9 reasonable person in its position.

10 To determine whether CommScope acted willfully, consider
11 all the facts, and assess CommScope's knowledge at the time of
12 the challenged conduct. Facts that may be considered include
13 whether or not CommScope reasonably believed that it did not
14 infringe or that the asserted patents were invalid. You may
15 also find that CommScope's actions were deliberate or
16 intentional if CommScope was willfully blind to TQ Delta's
17 patent rights.

18 Your determination, ladies and gentlemen, of willfulness
19 should incorporate the totality of the circumstances based on
20 all the evidence presented during this trial. Willfulness can
21 be established by circumstantial evidence. If you decide that
22 any infringement was willful, that decision should not affect
23 any damages that you award in this case. The Court will take
24 willfulness into account later, if you find it.

25 I'll now instruct you on the rules that you must follow

1 in deciding whether or not CommScope has proven that any of
2 the asserted claims of the asserted patents that have been
3 challenged as being invalid are, in fact, invalid. Again,
4 four of the patents in this case have been challenged by
5 CommScope as being invalid, four of them as being invalid by
6 being obvious, two of those four as being invalid as being
7 anticipated by the prior art.

8 Now, a United States patent, ladies and gentlemen, is
9 accorded a presumption of validity based on the presumption
10 that the United States Patent and Trademark Office, which
11 you've heard referred to during the case as the PTO, or as the
12 Patent Office, acted correctly in issuing the patent. This
13 presumption of validity extends to all issued United States
14 patents.

15 In order to overcome this presumption of validity,
16 CommScope must establish by clear and convincing evidence that
17 a claim is invalid. Like infringement, invalidity is
18 determined on a claim-by-claim basis. You must determine
19 separately for each claim whether that claim is invalid. And
20 if one claim of a patent is invalid, this does not necessarily
21 mean that any other claim is invalid.

22 You've heard evidence of prior art that the Patent Office
23 may or may not have evaluated. The fact that any particular
24 reference was or was not considered by the Patent Office does
25 not change CommScope's burden of proof. However, in making

1 your decision as to whether CommScope has met its burden of
2 proof to prove invalidity, you may take into account the fact
3 that the prior art was not disclosed or considered by the
4 Patent Office.

5 Prior art differing from the prior art considered by the
6 Patent Office may, but does not always, carry more weight than
7 the prior art that was considered by the Patent Office.
8 Again, the ultimate responsibility for deciding whether the
9 asserted claims that have been challenged as being invalid are
10 invalid is up to you, the members of the jury.

11 Now, claims are construed, ladies and gentlemen, in the
12 same way for determining infringement as for determining
13 invalidity. You must apply the claim language consistently
14 and in the same manner for these issues, the issues of
15 infringement and invalidity. Now, in making your
16 determination as to invalidity, you must consider each claim
17 separately.

18 When considering whether a particular reference predates
19 a particular asserted patent--and is, therefore prior art as
20 to that patent--the relevant date is called the patent's
21 priority date. To be prior art, an item or reference must
22 have been made, known, used, published, or patented either
23 before the invention was made or more than one year before the
24 priority date. Prior art does not include a publication that
25 describes the inventor's own work and was published less than

1 one year before the date of the invention.

2 The parties dispute the applicable priority date of the
3 '686 Patent in this case. TQ Delta contends that the
4 applicable priority date for the '686 Patent is no later than
5 January the 7th, 2000. CommScope contends that the relevant
6 date, the priority date, is August the 10th, 2000. You must
7 determine the priority date for the claimed inventions of the
8 '686 Patent.

9 Commscope must demonstrate by clear and convincing
10 evidence that TQ Delta is not entitled to its claimed priority
11 date. A claim is entitled to a priority date of an earlier
12 application if the earlier application contained a written
13 description of the invention as recited in that claim.

14 Now, as I've explained to you earlier, a previous device,
15 system, method, publication, or patent that predates the
16 claimed invention is generally called prior art and may
17 include items that were publicly known or that have been used
18 or offered for sale, or references such as publications or
19 other patents, that disclose the claimed invention or elements
20 of the claimed invention. Prior art may be authored or
21 created by anyone, ladies and gentlemen.

22 In evaluating the prior art to determine whether an
23 invalidity defense has been proven by clear and convincing
24 evidence, you may consider whether that prior art was or was
25 not before the PTO.

1 In this case, CommScope, the Defendants, contend that
2 claim 36 of the '686 Patent is invalid as being obvious in
3 view of the ITU-T temporary document FI-071, which you've
4 heard referred to as the FI-071, in combination with ITU-T
5 recommendation G.992.1, which you have heard referred to as
6 the G.992.1.

7 CommScope also contends that claim 5 of the '048 Patent
8 is invalid as being obvious in view of U.S. Patent No.
9 7,267,208, which you've heard referred to as the Mazzoni
10 reference, in combination with ITU-T standard G.993.1, which
11 you've heard referred to as the G.993.1, and/or Mazzoni in
12 view of ITU-T contribution LB-031, which you've heard referred
13 to as LB-031.

14 CommScope claims that claim 14 of the '008 Patent is
15 invalid as anticipated and/or obvious in view of Patent No.
16 6,657,949, which you've heard referred to as Jones, or the
17 Jones reference.

18 CommScope contends that claim 10 of the '835 Patent is
19 invalid as anticipated in view of G.992.1 and/or obvious in
20 view of G.992.1 in combination with ITU-T SG 15/Q4
21 contribution SC-060, which you've heard referred to as SC-060.

22 I'll now instruct you on how to determine whether any of
23 the asserted claims of the asserted patents are invalid as
24 being anticipated.

25 In order for someone to be entitled to a patent, the

1 invention must actually be new, and the inventor must not have
2 lost his or her rights by delaying the filing of an
3 application claiming the invention. In general, ladies and
4 gentlemen, inventions are new when the identical method has
5 not been used or disclosed before.

6 CommScope contends that claim 14 of the '008 Patent and
7 claim 10 of the '835 Patent are invalid because the claimed
8 inventions are not new. In other words, CommScope contends
9 that these asserted claims are anticipated by the prior art.

10 Anticipation requires that all of the elements of a
11 patent claim be disclosed in a single prior art reference.
12 Also, the single prior art reference must disclose all
13 elements of the claim arranged or combined in the same way as
14 in the claim--that is, as the claim has been construed or
15 interrupted by the Court.

16 CommScope must prove by clear and convincing evidence
17 that an asserted claim was anticipated by the prior art
18 reference.

19 Anticipation must be determined on a claim-by-claim
20 basis. If a dependent claim is anticipated by the prior art,
21 then the claims -- let me rephrase that. If an independent
22 claim is anticipated by the prior art, then the claims from
23 which it depends are necessarily anticipated as well.

24 To anticipate the invention, the prior art does not have
25 to use the same words as the claim, but all the elements or

1 requirements of the claim must have been disclosed, either
2 stated expressly or implied, to a person having ordinary skill
3 in the art of the technology of the invention, so that looking
4 at that one reference, that person could make and use the
5 claimed invention.

6 Keep in mind that CommScope may not establish
7 anticipation by arguing that the accused products practice the
8 prior art, or by comparing the accused products to a prior art
9 reference. An item of prior art may anticipate without
10 explicitly disclosing a feature of the claimed invention if
11 that missing characteristic is necessarily present, or
12 inherent, in the single anticipating reference.

13 Now, in this case, CommScope contends that claim 36 of
14 the '686 Patent, and claim 5 of the '048 Patent, and claim 14
15 of the '008 Patent, and claim 10 of the '835 Patent are
16 invalid as being obvious. I'll refer to these claims as the
17 challenged claims. Remember, there are four challenged claims
18 from four of the patents-in-suit. Four of them -- all four of
19 them are challenged as being obvious. Two of the same four
20 are also being challenged as being anticipated.

21 I'll now instruct you on how to determine whether any of
22 the challenged claims are invalid as being obvious.

23 Even though, ladies and gentlemen, an invention may not
24 have been identically disclosed or identically described in a
25 single prior art reference before it was made by an inventor,

1 in order to be patentable, that invention must also not have
2 been obvious to a person of ordinary skill in the field of the
3 technology of the asserted patent at the time the invention
4 was made.

5 CommScope, the Defendants, have the burden of
6 establishing obviousness by showing, through clear and
7 convincing evidence, that the claimed invention would have
8 been obvious to persons having ordinary skill in the art at
9 the time the invention was made in the field of the technology
10 of the accused patent.

11 In determining whether a claimed invention is obvious,
12 you must consider the level of ordinary skill in the field
13 that someone would have had at the time the invention was
14 made, the scope and content of the prior art, and any
15 differences between the prior art and the claimed invention.

16 Keep in mind that the existence of each and every element
17 of the claimed invention in the prior art does not necessarily
18 prove obviousness. Most, if not all, inventions, ladies and
19 gentlemen, rely on the building blocks of prior art. The
20 skill of the actual inventor is not necessarily relevant
21 because inventors may possess something that distinguishes
22 them from persons having ordinary skill in the art.

23 Now, in considering whether the claimed inventions were
24 obvious, you must first determine the scope and the content of
25 the prior art. The scope and content of the prior art for

1 deciding whether an invention was obvious includes at least
2 art in the same field as the claimed invention. It also
3 includes prior art from different fields that a person of
4 ordinary skill in the art would have considered when trying to
5 solve the problem that is addressed by the invention.

6 Further, teachings, suggestions, and motivations may also
7 be found within the knowledge of a person of ordinary skill in
8 the art, including references -- excuse me, inferences and
9 creative steps that a person of ordinary skill in the art
10 would employ. A person of ordinary skill may be able to fit
11 the teachings of multiple pieces of prior art together like
12 the pieces of a puzzle. The person of ordinary skill in the
13 art would have the capability of understanding the scientific
14 and engineering principles applicable to the prior art -- to
15 the pertinent prior art.

16 Now, in considering whether a claimed invention was
17 obvious, you may, but are not required, to find obviousness if
18 you find that, at the time of the claimed invention, there was
19 a reason that would have prompted a person having ordinary
20 skill in the field to combine the known elements in a way that
21 the claimed invention does, taking into account such factors
22 as:

23 1. Whether the claimed invention was merely the
24 predictable result of using prior art elements according to
25 their known function;

1 2. Whether the claimed invention provides an obvious
2 solution to a known problem in the relevant field;

3 3. Whether the prior art teaches or suggests the
4 desirability of combining elements in the claimed invention;

5 4. Whether the prior art teaches away from combining
6 elements in the claimed invention;

7 5. Whether it would have been obvious to try the
8 combination of elements in the claimed invention, such as when
9 there is a design need or market pressure to solve a problem,
10 and there are a finite number of identified predictable
11 solutions; and

12 6. Whether the change resulted more from design
13 incentives or other market forces.

14 To find that the prior art rendered the invention
15 obvious, you must find that it provided a reasonable
16 expectation of success. Simply being obvious to try is not
17 sufficient in unpredictable technologies.

18 In determining whether the claimed invention was obvious,
19 consider each claim separately. Do not use hindsight, ladies
20 and gentlemen. Consider only what was known at the time of
21 the invention. In other words, you should not consider what a
22 person of ordinary skill in the art would know today or what
23 has been learned from the teachings of the patents-in-suit.

24 Now, in making these assessments, you should take into
25 account any objective evidence, sometimes called secondary

1 considerations, that may have existed at the time of the
2 invention and afterwards that may shed light on the
3 obviousness or non-obviousness of the claimed invention. The
4 following are possible secondary considerations, but it's up
5 to you, the jury, to decide whether secondary considerations
6 of non-obviousness exist at all. These are:

7 1. Whether the invention was commercially successful as
8 the result of the merits of the claimed inventions, rather
9 than the result of design needs or market pressure,
10 advertising, or similar activities;

11 2. Whether the invention satisfied a long-felt need;

12 3. Whether the inventor proceeded contrary to accepted
13 wisdom in the field;

14 4. Whether others tried but failed to solve the problem
15 solved by the claimed invention;

16 5. Whether others invented the invention at roughly the
17 same time;

18 6. Whether others copied the claimed invention;

19 7. Whether others accepted licenses under the
20 patents-in-suit because of the merits of the claimed
21 invention;

22 8. Whether the claimed invention achieved unexpected
23 results;

24 9. Whether others in the field praised the claimed
25 invention;

1 10. Whether there were changes or related technologies
2 or market needs contemporaneous with the invention; and

3 11. Whether persons having ordinary skill in the art at
4 the time of the invention expressed surprise or disbelief
5 regarding the invention.

6 These factors are relevant only if there is a connection
7 or a nexus between the factors and what differentiates the
8 claimed invention from the prior art. TQ Delta, the
9 Plaintiff, has the burden of establishing this connection or
10 nexus. Moreover, even if you conclude that some of the above
11 secondary considerations have been established, those factors
12 should be considered along with all the other evidence in this
13 case in determining whether CommScope has proven that the
14 claimed invention would have been obvious.

15 In support of obviousness, you may also consider whether
16 others independently invented the claimed invention before or
17 at about the same time as the named inventor thought of it.
18 In making these determinations, a person of ordinary skill
19 uses simple common sense and can rely upon the inferences and
20 creative steps that a person of ordinary skill in the art
21 would employ.

22 Also, CommScope does not need to show that one of
23 ordinary skill would actually have combined the physical
24 structures of two references. One need only combine the
25 teachings. Remember, as stated earlier, that prior art is not

1 limited to the patents and published materials, but includes
2 the general knowledge that would have been available at the
3 time to one of ordinary skill in the field of the invention.

4 If you find that CommScope has proven the obviousness of
5 a claim by clear and convincing evidence, then you must find
6 that that claim is invalid.

7 If you find that CommScope has infringed any valid claim
8 of the asserted patents, you must then consider what amount of
9 damages, if any, to award to TQ Delta.

10 I'm now going to instruct you about the measure of
11 damages, but by instructing you on damages, ladies and
12 gentlemen, I'm not suggesting which party should win this case
13 on any issue.

14 If you find that CommScope has infringed any valid claim
15 of the patents-in-suit, then TQ Delta -- I'm sorry. Let me
16 restate that. If you find that CommScope has not infringed
17 any valid claim of the patents-in-suit, then TQ Delta is not
18 entitled to any patent damages.

19 TQ Delta, the Plaintiff, has the burden to establish the
20 amount of its damages by a preponderance of the evidence. In
21 other words, you should award only those damages that TQ Delta
22 establishes that it more likely than not suffered as a result
23 of CommScope's infringement.

24 Now, while TQ Delta is not required to prove the amount
25 of its damages with mathematical precision, it must prove them

1 with reasonable certainty. TQ Delta is not entitled to
2 damages that are remote or that are only speculative.

3 Now, the damages that you award, if any, must be adequate
4 to compensate TQ Delta for any infringement that you may find.
5 You may not award to TQ Delta more damages than are adequate
6 to compensate for the infringement. You also must not include
7 any additional amount in any award you make for the purposes
8 of punishing CommScope or for the purpose of setting an
9 example.

10 I'll now instruct you on how to calculate reasonable
11 royalty damages.

12 A royalty, ladies and gentlemen, is a payment made to a
13 patent holder in exchange for the right to make, use, or sell
14 the claimed invention. The parties have put on evidence of
15 two different damages models in this case, and you may use
16 either method to calculate reasonable royalty damages.

17 TQ Delta, the Plaintiff, has proposed a cost-saving model
18 of calculating reasonable royalty damages that values the
19 accused products that CommScope, the Defendant, provides to
20 its customers. This approach relies upon estimated costs, if
21 any, that CommScope saved from making, using, or selling the
22 accused products.

23 In considering the amount of reasonable royalty damages
24 under this cost-saving model, you should focus on whether
25 CommScope's make, use, or sale of the patented technology

1 allowed it to avoid taking a different, more costly course of
2 action, and if so, how much CommScope saved by using the
3 accused products instead of taking the more costly course of
4 action.

5 Now, a reasonable royalty may also be calculated by
6 determining the amount of the royalty payment that a patent
7 holder and the alleged infringer would have agreed to in a
8 hypothetical negotiation taking place at a time prior to when
9 the infringement first began. The Defendants, CommScope, have
10 proposed a reasonable royalty calculation based on such a
11 hypothetical negotiation.

12 In considering this hypothetical negotiation, you should
13 focus on what the expectations of the patent holder and the
14 alleged infringer would have been had they entered into an
15 agreement at that time and had they been acting reasonably in
16 their negotiations. In determining this, you must assume that
17 both parties to the hypothetical negotiation believed that the
18 patents-in-suit were valid and infringed, and that both
19 parties were willing to enter into an agreement.

20 The reasonable royalty you determine must be a royalty
21 that would have resulted from the hypothetical negotiation and
22 not simply a royalty that either party would have preferred.

23 Evidence of things that happened after the infringement
24 first began can be considered in evaluating the reasonable
25 royalty only to the extent that the evidence aids in assessing

1 what royalty would have resulted from a hypothetical
2 negotiation.

3 Although evidence of the actual profits of an alleged
4 infringer -- although evidence of the actual profits an
5 alleged infringer made may be used to determine the
6 anticipated profits at the time of the hypothetical
7 negotiation, the royalty must not be limited or increased
8 based on the actual profits that the alleged infringer made.

9 Now, in determining the reasonable royalty under the
10 hypothetical negotiation approach, you should consider all the
11 facts known and available to the parties at the time the
12 infringement began.

13 Some of the kinds of factors that you may consider in
14 making your determination are:

15 1. The royalties received by the patentee for the
16 licensing of the patents-in-suit, proving or tending to prove
17 an established royalty;

18 2. The rates paid by the licensee for the use of other
19 patents comparable to the patents-in-suit. Comparable license
20 agreements include those covering the use of the claimed
21 invention or similar technology;

22 3. The nature and scope of the license, as exclusive or
23 non-exclusive, or as restricted or non-restricted in terms of
24 territory, or with respect to whom the manufactured product
25 may be sold;

1 4. The licensor's established policy and marketing
2 program to maintain its patent exclusivity by not licensing
3 others to use the invention or by granting licenses under
4 special conditions designed to preserve that exclusivity;

5 5. The commercial relationship between the licensor and
6 licensee, such as whether they are competitors in the same
7 territory in the same line of business;

8 6. The effect of selling the patented specialty in
9 promoting sales of other products of the licensee, the
10 existing value of the invention to the licensor as a generator
11 of sales of his non-patented items, and the extent of such
12 derivative or convoyed sales;

13 7. The duration of the patent and the term of the
14 license;

15 8. The established profitability of the product made
16 under the patents, its commercial success, and its current
17 popularity;

18 9. The utility and advantages of the patented property
19 over the old modes or devices, if any, that had been used for
20 working out similar results;

21 10. The nature of the patented invention, the character
22 of the commercial embodiment of it as owned and produced by
23 the licensor, and the benefits to those who have used the
24 invention;

25 11. The extent to which the infringer has made use of

1 the invention and any evidence probative of the value of that
2 use;

3 12. The portion of the profit or of the selling price
4 that may have been customary in the particular business or in
5 comparable businesses to allow for the use of the invention or
6 analogous inventions;

7 13. The portion of the realizable profits that should be
8 credited to the invention, as distinguished from non-patented
9 elements, the manufacturing process, business risks, or
10 significant features or improvements added by the infringer;

11 14. The opinion and testimony of qualified experts; and

12 15. The amount that a licensor (such as the patentee)
13 and a licensee (such as the infringer) would have agreed upon
14 at the time the infringement began if both had been trying
15 reasonably and voluntarily to reach an agreement; that is, the
16 amount which a prudent licensee who desired as a business
17 proposition to obtain a license to the patented invention,
18 would have been willing to pay as a royalty and yet be able to
19 make a reasonable profit and which amount would have been
20 acceptable to a prudent patentee who was willing to grant a
21 license.

22 Now, you may have heard these factors referred to during
23 the trial, ladies and gentlemen, as the *Georgia-Pacific*
24 factors. No one of these factors is dispositive, and you
25 could -- excuse me. And you can and you should consider the

1 evidence that's been presented to you throughout the trial on
2 each of these factors.

3 You may also consider other factors which, in your mind,
4 would have increased or decreased the royalty that the alleged
5 infringer would have been willing to pay and the patent holder
6 would have been willing to accept, acting as normally prudent
7 businesspeople.

8 The Defendants, CommScope, contend that TQ Delta, the
9 Plaintiff, breached its contract with the ITU obligating it to
10 grant licenses to its standard essential patents on fair,
11 reasonable, and non-discriminatory FRAND terms and conditions.

12 I will give you further instructions regarding
13 CommScope's breach of contract claim shortly. But if you find
14 that TQ Delta breached its FRAND obligation and if you also
15 find that CommScope infringed TQ Delta's asserted patents,
16 then TQ Delta's breach of its FRAND obligation should not
17 reduce or limit the damages awarded for CommScope's
18 infringement, if any.

19 Similarly, if the evidence supports, in your mind, a
20 finding of both infringement by CommScope and breach of
21 contract by TQ Delta, then you should award such an amount
22 that would compensate CommScope for such a breach, if any,
23 regardless of what your verdict might be regarding TQ Delta's
24 infringement claims.

25 Now, you've heard throughout this trial as to whether TQ

1 Delta should be entitled to a running royalty or a lump sum
2 royalty. If you find that TQ Delta is entitled to damages in
3 the form of a reasonable royalty for infringement, you must
4 decide whether the parties would have agreed to a running
5 royalty or a fully paid-up lump sum royalty at the time of the
6 hypothetical negotiation.

7 A running royalty is a fee paid for the right to use the
8 patent that is paid for each unit of the infringing products
9 that have been sold. If there are additional units sold in
10 the future, any damages for these sales will not be addressed
11 by you. If you decide that a running royalty is appropriate,
12 then the damages you award, if any, should reflect the total
13 amount necessary to compensate TQ Delta for CommScope's past
14 infringement.

15 However, a lump sum royalty, a reasonable royalty in the
16 form of a lump sum royalty, is when the infringer pays a
17 single price for a license covering both past and future
18 infringing sales. If you decide that a reasonable royalty in
19 the form of a lump sum is appropriate, then the damages you
20 award, if any, should reflect the total amount necessary to
21 compensate TQ Delta for CommScope's past and future
22 infringement.

23 Now, TQ Delta committed to the VDSL2, G.bond, and G.INP
24 standards, which I'll refer to as the standards of the ITU, to
25 license patents which are essential to the standards on FRAND

1 terms and conditions. TQ Delta has also committed to license
2 the asserted patents on FRAND terms, subject to the conditions
3 such as reciprocity of potential licensees.

4 The FRAND commitment in this case does not require any
5 specific licensing model to determine a FRAND royalty. You
6 should determine a FRAND royalty based on the totality of the
7 circumstances. As I have previously instructed, FRAND and
8 RAND have been used interchangeably throughout this trial.

9 Now, the law requires that any royalty awarded to TQ
10 Delta correspond to the value of the patented invention within
11 the accused product, as distinct from other unpatented
12 features or market factors. And this is particularly true
13 when the accused products have multiple features and multiple
14 components that are not covered by the asserted patents or
15 where the asserted patents work in conjunction with other
16 non-patented items.

17 If unpatented features contribute to the accused
18 products, you must apportion that value out so as to exclude
19 any value attributable to unpatented features. You must
20 determine the appropriate royalty rate and the appropriate
21 royalty base that reflect the value attributable to the
22 patented invention alone.

23 In light of this FRAND commitment, ladies and gentlemen,
24 I have referred at times in these instructions to SEPs,
25 standard essential patents. The parties have stipulated that

1 the '686 Patent, the '881 Patent, the '008 Patent, and the
2 '835 Patent, and the '354 Patent are standard essential
3 patents or SEPs.

4 The parties have also stipulated that the '048 Patent and
5 the '411 Patent are not standard essential patents and are not
6 SEPs and, therefore, a reasonable royalty determination
7 regarding these patents does not need to take into account any
8 FRAND obligations.

9 Now, TQ Delta and Aware, Inc., which you've heard
10 referred to as Aware and the entity from which TQ Delta
11 purchased the patents-in-suit, submitted written commitments
12 to the ITU covering the '881, the '686, the '008, the '835,
13 and the '354 Patents, in which they agreed to grant a license
14 on FRAND terms and conditions.

15 When dealing with standard essential patents, SEPs, there
16 are two special apportionment issues that arise. First, the
17 patented features must be apportioned from all of the
18 unpatented features reflected in the standard. Second, the
19 patentee's royalty must be premised on the value of the
20 patented features and not any value added by the standard's
21 adoption of the patented technology.

22 You must make sure that any reasonable royalty
23 determination takes into account TQ Delta's FRAND obligations,
24 as the Court has just explained it to you. And a reasonable
25 royalty on the standard essential patents that the parties

1 have stipulated to, i.e., the '686, the '881, the '008, the
2 '835, and the '354 Patents, cannot exceed the amount permitted
3 under TQ Delta's FRAND obligations.

4 In determining what amount is a FRAND royalty, you may
5 consider any evidence of patent holdout. Patent holdup exists
6 when the holder of standard essential patents demands an
7 excessive or unjustified royalty, which is, considering the
8 totality of the circumstances, not fair, reasonable, or
9 non-discriminatory.

10 Alternatively, ladies and gentlemen, you've also heard
11 the term holdout, which refers to an unwilling licensee of
12 standard essential patents, seeking to avoid taking a license
13 while practicing the standard and enjoying the benefit of the
14 SEP holder's technology.

15 In determining a reasonable royalty, you may also
16 consider whether CommScope had commercially-acceptable
17 non-infringing alternatives to the accused products that were
18 available at the time of the hypothetical negotiation and
19 whether that would have affected the reasonable royalty the
20 parties would have agreed upon.

21 A non-infringing alternative is a way of providing the
22 same or comparable functionality or achieving the same or a
23 comparable result that does not require the use of the
24 asserted claims. You may compare the patented invention to
25 non-infringing alternatives to determine the value of said

1 patented invention, including the utility and advantages of
2 the patent over the old modes or devices, if any, that had
3 been used to achieve similar results.

4 Now, a patentee is not entitled to damages for any
5 infringement committed more than six years prior to the filing
6 of the claim for infringement. In this case, the damages
7 period commences on August the 13th, 2015, six years prior to
8 the date on which TQ Delta filed its complaint in this case.
9 No damages can be awarded for any infringement that occurred
10 before the date that the asserted patents were issued. Where
11 you find that an asserted claim is both infringed and not
12 invalid, you may not award damages for activities occurring
13 before the damages period begins.

14 A patentee is not entitled to damages after the
15 expiration of an asserted patent. The '008 Patent expired on
16 November the 9th, 2020, and the '354 Patent expired on April
17 the 18th, 2021. Therefore, the damages period for the '008
18 Patent ended on November the 9th, 2020, and the damages period
19 for the '354 Patent ended on April the 18th, 2021.

20 With regard to the Defendants' alleged breach of contract
21 claim against the Plaintiff, the Defendants CommScope bear the
22 burden of proving their breach of contract claim by a
23 preponderance of the evidence. CommScope contends that TQ
24 Delta breached its contract with the ITU to grant licenses to
25 standard essential patents held by TQ Delta on FRAND terms and

1 conditions. TQ Delta denies that it has breached any of its
2 contractual obligations.

3 Now, before you can decide these issues, you'll need to
4 understand the terms of the contract at issue in this case. A
5 contract is a legally enforceable promise or set of promises.
6 When two individuals or entities enter into a contract that is
7 intended to benefit a third party, the third party has the
8 right to enforce the terms of the contract in the event the
9 contract is later breached.

10 The contract at issue in this case is the obligation
11 imposed on TQ Delta because certain of its patents were
12 contributed to the ITU, which is a standard-setting
13 organization. The obligation is to license those standard
14 essential patents, or SEPs, to third parties on FRAND terms
15 and conditions.

16 The ITU has a policy called its common patent policy, or
17 CPP. The common patent policy requires SEP owners to license
18 their patents on specific terms. TQ Delta made a commitment
19 to the ITU that it would license its patents essential to the
20 standards on FRAND terms.

21 Whether or not a license is FRAND will depend on the
22 totality of the particular facts and circumstances existing
23 during the negotiations and leading up to the license. There
24 is no fixed or required methodology for setting or calculating
25 the terms of a FRAND license other than when all aspects have

1 been considered, it is fair, reasonable, and
2 non-discriminatory.

3 Although CommScope is not a party to TQ Delta's contract
4 with the ITU, CommScope is a third-party beneficiary to TQ
5 Delta's FRAND commitment to the ITU and CommScope can enforce
6 that obligation. CommScope contends that TQ Delta breached
7 its commitment to the ITU by failing to offer to CommScope a
8 license to TQ Delta's SEPs on FRAND terms.

9 To find that TQ Delta has breached a contractual
10 obligation, you must conclude that the party bound by the
11 contract did not fulfill its obligations under the contract.
12 In deciding whether or not TQ Delta has breached a contractual
13 obligation, you must determine (1) whether TQ Delta had a
14 contractual obligation; (2) whether TQ Delta violated any such
15 contractual obligation; (3) if TQ Delta violated a contractual
16 obligation, whether there is a defense for that violation; and
17 (4) if any obligations were violated and there is no defense,
18 what are the damages, if any, for the violation.

19 I'll now instruct you as to the measure of damages for a
20 breach of contract claim, and by instructing you on these
21 damages, I am not suggesting which party should win on any
22 issue.

23 To recover damages for breach of contract, CommScope must
24 prove by a preponderance of the evidence that TQ Delta failed
25 to comply with its contract with the ITU and that the failure

1 to comply with that contract resulted in harm to CommScope.
2 That means that CommScope must prove that TQ Delta breached
3 its FRAND obligations and that the breach caused harm to
4 CommScope.

5 If you find that TQ Delta has breached a contractual
6 obligation, then you must determine what amount fairly
7 compensates CommScope for all of its damages. These damages
8 are called compensatory damages, and the purpose of
9 compensatory damages is to make the injured party whole--that
10 is, to compensate the injured party for the damage that it has
11 suffered.

12 The damages you award must be fair compensation for all
13 the injured party's -- all the injured party's damages, no
14 more, no less. Damages, again, are not allowed as punishment
15 and cannot be imposed or increased to penalize a party who
16 breached a contract. And you should not award compensatory
17 damages that are speculative or arbitrary.

18 Now, if you find by a preponderance of the evidence that
19 TQ Delta technically breached its contractual obligations, but
20 CommScope suffered no actual loss or injury as a result of
21 that violation, then you may award the non-breaching party a
22 nominal amount of damages. Nominal damages are an
23 inconsequential or trifling sum awarded to a party when a
24 technical violation of its right has occurred but the party
25 has suffered no actual loss or injury.

1 As you've already heard, TQ Delta contends that CommScope
2 infringes the asserted claims of the patents-in-suit. A
3 finding of infringement by CommScope should not reduce or
4 limit the damages for breach of warranty -- breach of
5 contract--I'm sorry--by TQ Delta, if any, but there may be
6 independent damages which, if shown, could flow from such
7 infringement.

8 If the evidence supports a finding of infringement by
9 CommScope, in your mind, then you should award such an amount
10 of damages to TQ Delta which it has proven would compensate it
11 for any such infringement by CommScope, regardless of what
12 your verdict is on CommScope's breach of contract claim
13 against TQ Delta.

14 Now, ladies and gentlemen, we're ready to hear closing
15 arguments from the attorneys in this case. We'll begin with
16 the Plaintiff's first closing argument.

17 Mr. Davis, you may present the Plaintiff's first closing
18 argument to the jury.

19 MR. DAVIS: Thank you, Your Honor.

20 THE COURT: Would you like a warning on your time?

21 MR. DAVIS: Yes, Your Honor, I would. Could I have
22 a warning at 10 minutes and 20 minutes, when those amounts of
23 time have been used.

24 THE COURT: I'll warn you when you have used 10
25 minutes and when you have used 20 minutes.

1 MR. DAVIS: Thank you, Your Honor.

2 THE COURT: You may proceed with closing argument
3 when you are ready.

4 MR. DAVIS: Good morning, ladies and gentlemen of
5 the jury.

6 Again, I'd like to begin or end this process where we
7 began by thanking you. We made it. You've been here all week
8 and you've listened attentively, you've listened to a lot of
9 technical information and you've paid close attention, and we
10 appreciate your attention and the sacrifices you have made
11 this week. We know it has not been easy.

12 It's been a long road to get here for TQ Delta, and to be
13 very clear, we are here for one reason and one reason only.
14 This moment has arrived because CommScope has been using TQ
15 Delta's patented technology without our permission and without
16 paying for it for 15 years. We are here because to this very
17 moment today, they've refused to do the right thing.

18 It's been a tough road. We put CommScope on notice back
19 in 2013 when we sent them the first letter, and we told them
20 that we believed they were using our patents back then. And
21 what happened? Did they come to the table? Did they
22 negotiate in good faith? No, they did not. As you heard from
23 Ms. Divine, they refused to negotiate in good faith.

24 I'd like to remind you of some of the key events in this
25 case and the time period over which the facts in this case

1 spans.

2 Starting in 1999 through 2004, the inventions claimed in
3 the patents-in-suit were disclosed to the Patent Office
4 through provisional applications. From 2005 to 2010, the
5 three standards that are at issue in this case were adopted by
6 the ITU. In 2009-2010 time period, Aware, the company that
7 owned the patents, decided to exit the DSL business. It
8 ultimately sold its patents to TQ Delta in 2012.

9 In 2012, TQ Delta began to manage the patents and
10 continued to develop the DSL technology with the help of Mr.
11 Tzannes and a contribute to the ITU by participating in the
12 standards meetings.

13 In 2015 -- I'm sorry. On July 15th, 2013, TQ Delta sent
14 a letter to CommScope notifying it that it was using TQ
15 Delta's patents by selling standard essential DSL modems and
16 requested to enter into negotiations to license these standard
17 essential patents.

18 Those negotiations dragged on for years. Despite TQ
19 Delta's best efforts to get CommScope to come to the table, by
20 providing information to them about the patents, about the
21 technology, by providing them with information about the range
22 of royalty rates that they would be looking for in the case,
23 CommScope refused to meaningfully engage.

24 And what happened in the interim? In 2017, '18, and '19,
25 other members of the -- of the market, other DSL equipment

1 manufacturers, began to take licenses--Zhone, Fujitsu,
2 Siemens, ZyXEL. And at those times, the royalty rates that TQ
3 Delta was charging for its standard essential patents became
4 set. They weren't set back in 2009 with a different company,
5 with different licensees, with a chip component to the entire
6 box.

7 Commscope had the opportunity to participate in those
8 discussions. They could have been the first one. If they had
9 wanted to set the rates, they could have began talking with us
10 meaningfully in 2013, but they didn't.

11 And then more recently, in 2022, Nokia took a license,
12 and that license is important to this case and I'll talk more
13 about it later.

14 That's the overview of the history of the events in this
15 case.

16 All along the way, from 2013 up until now, in the course
17 of their licensing negotiations, CommScope never said, we
18 don't infringe, let us show you where you're wrong. They
19 never said, your patents are invalid, let us show you where
20 they are. They just stalled. And, frankly, they probably
21 just hoped we would go away. And all the while, the clock was
22 ticking. They were generating revenue using our technology.

23 We want to -- we want to -- we want what we have wanted
24 since 2013. We want CommScope to pay for the use of our
25 patented technology. As you've heard from His Honor, you'll

1 have the jury instructions in the jury room. And I'm going to
2 take a few minutes and walk you through the evidence I think
3 you're going to need to make your decision to show that we
4 have met our burden on infringement and damages and how
5 CommScope has utterly failed to meet theirs.

6 I'll start with infringement. Our burden of proof is
7 preponderance of the evidence. If the evidence we've brought
8 you tips the scales ever so slightly in our favor, then we've
9 met our burden. I believe that we've more than met our burden
10 to prove infringement in this case.

11 What did we bring you? For each of the seven patents
12 that I've listed on the left here with their patent number and
13 with the names, the nicknames, that we've used to refer to
14 these patents throughout the case. We brought you testing
15 evidence. We brought you source code.

16 We brought you experts who testified as to every claim,
17 every element of the claim, every word, every word of the
18 Court's constructions, and they showed you the evidence they
19 relied on, and they found that there was infringement. We
20 brought you evidence from CommScope's own internal documents.

21 And, finally, we brought you evidence from the
22 UberMatrix. The UberMatrix is the document that AT&T lists
23 its requirements and tells CommScope what products it wants in
24 the box, and CommScope provides those features and
25 functionality.

1 What did CommScope bring you? Did CommScope bring you
2 any testing evidence? No, they didn't. They could have, but
3 they didn't. Did they bring you source code evidence? Their
4 experts could have looked at the source code, the ones that
5 testified, but they didn't. All they did was criticize our
6 analysis of the code, but they never performed their own
7 analysis.

8 Each of the experts that testified, if they mentioned
9 source code at all, it was only to say, TQ Delta, you got it
10 wrong, but my understanding of the code, I got from another
11 expert who didn't come and testify. And that's significant.
12 Right? Because when you're testifying, you're under oath and
13 you're swearing to tell the truth.

14 The only expert that even -- that they brought to even
15 testify about non-infringement is a man named Niel Ransom.
16 Mr. Ransom testified as to a few of the patents, but the
17 evidence he brought did not satisfy their burden. And Mr.
18 Ransom, each time he testified, confirmed that he did not look
19 at the code, he did not do testing, and that he relied on
20 someone else for source code evidence.

21 For CommScope's documents, I was paying attention and I
22 hope you were, too, that when their experts were testifying,
23 they didn't show you CommScope documents. They didn't show
24 you any internal CommScope document and say, look, here's the
25 document that shows that our products work differently than

1 the claims.

2 And then for three of the patents, they brought their own
3 witnesses, a Mr. Wauters and a Mr. Miller who testified, but
4 those are their employees. And did you listen to the
5 substance of their testimony? They did not tell you that they
6 performed any kind of technical analysis that they could bring
7 into court and show you.

8 Mr. Wauters just said, oh, you know, we don't really use
9 that, AT&T doesn't use it. But he didn't bring you any
10 evidence to corroborate that. He's just asking you to take
11 his word for it. And that witness is biased. He's biased in
12 favor of his employer, CommScope.

13 Mr. Miller, he said that he did some testing, but he
14 didn't bring any proof to show that. He said, oh, I've been
15 looking at watching whether or not this feature or that
16 feature's turned on. That was news to us. If he had proof,
17 he didn't bring it.

18 Doctor Ransom even confirmed that if you had wanted to do
19 a proper non-infringement analysis, you would have looked at
20 code and you would have looked at testing.

21 He was asked, And if you wanted to know how it was
22 actually implemented, one thing you would need to do is look
23 at the source code. Right?

24 "That would have told me a lot."

25 He continues on about testing. "That would be a good

1 way, too." And he didn't present any of that to the jury.
2 The only expert for CommScope that testified on
3 non-infringement, their claim that they don't infringe, he
4 didn't bring any of that evidence.

5 On the '048 Patent, the memory sharing, I'm sure you
6 remember this slide from opening statements. They made up a
7 distinction that memory is not equal, that memory is not
8 delay. And in opening statement, CommScope's lawyer tried to
9 bolster that claim by saying that, oh, Texas Instruments came
10 up with this idea and it made it into the standard and,
11 because of that, memory is not delay in the new standard.

12 And that was absolutely false, and Doctor Ransom
13 confirmed that.

14 This is Doctor Ransom: "Isn't it true, Doctor Ransom,
15 that the ITU closed the proposal and that means that it was
16 not adopted?

17 "Evidently not in the standard. Not in total."

18 Then when he was asked again whether if Mr. Dacus said
19 that it absolutely wasn't adopted into the standard, would
20 that be correct? "No, it doesn't seem to be accurate."

21 THE COURT: Ten minutes have been used.

22 MR. DAVIS: Thank you, Your Honor.

23 CommScope has brought you little to no evidence that they
24 don't infringe. We have brought you mountains of evidence
25 through the source code and the testing, their own documents,

1 the UberMatrix. We believe that we have more than satisfied
2 our burden, and we're going to ask you to find that CommScope
3 infringes these patents.

4 So what does CommScope say? They say, well, the patents
5 are invalid. Of course, the Patent Office got it wrong, at
6 least four times. Their burden for proving invalidity is
7 clear and convincing evidence. They must bring you so much
8 evidence that you have an abiding conviction that these
9 patents are invalid. They can't just tip the scales a little.
10 They've got to tip substantially.

11 Did they bring you any motivation to combine for any of
12 the obviousness arguments for the '686, the '008, or the '835
13 Patent? I didn't hear it. Did they bring you any evidence of
14 a reasonable expectation of success for any of these three
15 patents? I didn't hear it.

16 What I heard was that they said, oh, was this known? Was
17 this old? Yes. And the witness will say, yeah, that was old,
18 that was old.

19 But as Judge Gilstrap just instructed you, the existence
20 of each and every element of the claimed invention in the
21 prior art does not necessarily prove obviousness. You can't
22 just say, oh, this piece was known, that piece was known, this
23 other piece was known, call them old, and say the patents are
24 invalid, the Patent Office got it wrong. You've got to do
25 analysis.

1 And I didn't hear the level of analysis that you would
2 expect to hear to meet a burden of clear and convincing
3 evidence.

4 Look at the evidence we brought you for infringement
5 where our burden is simply preponderance. I mean, our experts
6 sat on the stand for hours going through every element,
7 multiple categories of evidence. Their experts got on the
8 stand, said, yeah, here's the concept of noise; yeah,
9 everybody knew about noise, that was old.

10 That's not a proper invalidity analysis, ladies and
11 gentlemen, to take away a duly-issued United States patent, to
12 take away the property of TQ Delta? That doesn't cut it.

13 Regarding the fourth patent that CommScope claims is
14 invalid, that's the '048 Patent, you heard from Doctor Wesel,
15 and he was the only one to actually provide any testimony
16 about a motivation to combine from the Defendants. You heard
17 him say that engineers at Siemens were looking to build a
18 VDSL1 product, and they were going to combine that with
19 something called Mazzoni. I'm sure you remember the name
20 Mazzoni.

21 But the problem is that no one had ever deployed VDSL1,
22 and Doctor Ransom agreed with him. VDSL1 was a dead end. It
23 wasn't a good standard and it wasn't really adopted. How can
24 you have any reasonable expectation of success or any
25 motivation to combine Mazzoni with a standard that was dead?

1 I want to talk about the Jones patent. This is
2 the -- relates to the '008 Patent, the phase scrambling
3 patent. And if you remember the testimony, Doctor Cimini
4 contended that the scrambler, which is in box 410, produces a
5 pseudorandom number that changes the phase.

6 But he was confronted on cross-examination with the fact
7 that the only random number generator is in box 406 and it's
8 not connected to the scrambler. Jones knew how to claim a
9 random number generator for phase shifting when he wanted to,
10 but he didn't. He used a scrambler. And the scrambler just
11 produced a series of numbers sequential that are not
12 pseudorandom 123, 123. Jones does not invalidate the '008
13 Patent.

14 In fact, Doctor Cimini admitted that Jones doesn't really
15 say one way or another whether it's using a series pattern or
16 a pseudorandom pattern. That's correct. You can't meet your
17 burden of clear and convincing evidence by saying, well, the
18 reference we're relying on doesn't really say one way or the
19 other. It's just not enough, ladies and gentlemen.

20 The second -- another argument they have on the '835
21 Patent, which was the DSL reboot patent, is that it was
22 invalidated by one of the ITU standards, the G.992.1 standard.
23 But the G.992.1 standard, when it talks about switching on a
24 predefined codeword, the word of the claim is on? The
25 language in the standard is around. On does not mean around.

1 On means on. And the words of a claim matter. And if you're
2 going to invalidate a patent, you can't do it by just getting
3 close or just finding some similarities. It's got to be in
4 there.

5 Additionally, the 992.1 reference talks about changing on
6 a superframe boundary, not a codeword boundary. Different
7 words. And Doctor Cimini tried to explain how they're really
8 the same thing, but they're not. And you heard that on
9 cross-examination and you heard that from our experts.

10 That brings me to damages. Damages, again, are
11 determined based upon a preponderance of the evidence. And
12 where do we look for damages? We look at the use made of the
13 invention by the infringer.

14 They want to say AT&T didn't use features or
15 functionality. They brought no evidence of that. They want
16 to distract you from their use, their 36 million units, the
17 \$3.4 billion in revenue that they've generated from this.
18 They want to distract you from those numbers with a whole
19 bunch of things.

20 We're going to talk about some of those. One of them is
21 nobody uses it, nobody cares about DSL anymore, DSL is
22 declining. Well, sure, it's been declining for the last 20
23 years, and these patents are expiring. Some of them have
24 already expired, and some of them are expiring over the next
25 six, four, five years.

1 And they've delayed negotiating with us for at least 10
2 of those years. So it's not fair to come in here and say,
3 this stuff's old. Sure, any technology is going to be old
4 after 20 years. It's not fair to say that. But that's what
5 they're saying because they're trying to take your focus off
6 of what you should be focused on.

7 And Doctor Putnam went through the analysis and showed
8 you exactly with -- he has a Ph.D. in economics. He knows how
9 to do this. He's evaluated standard essential patents any
10 number of times. He walked you through his analysis. And I
11 don't have time to do that, but his ultimate conclusion is
12 that it should be 33 cents per unit per standard per patent --
13 per standard practicing patent.

14 And he performed an analysis to show you how, if you look
15 at all the patents, these are the patents on the left, and
16 which standards those patents are essential to, you can line
17 up and figure out and come to a cumulative royalty rate. So
18 those 33 cents per patent per standard per unit adds up to
19 \$2.99 per unit.

20 And when you multiply that times the number of units at
21 issue in this case, the 36 million DSL modems that CommScope
22 has sold, that number comes out to 89 million. That is a
23 reasonable royalty for this case.

24 Commscope has said, well, that's -- that's a lot of our
25 profits.

1 That's what they're concerned about. They're not
2 concerned about doing the right thing. They're concerned
3 about their profits. That's why they've delayed.

4 And, yeah, if they had engaged and done the right thing
5 10 years ago, what reasonable companies do when they take
6 patent licenses is build the price of using other people's
7 technology, of licenses, of royalty rates, you build that into
8 the product, the price that they charged AT&T. That's what
9 they should have done if they were worried about their
10 profits. But they decided not to. They didn't want to.

11 Doctor Putnam also provided you another analysis called
12 the holdout analysis, because when you're dealing with
13 standard essential patents, this kind of conduct in the
14 marketplace, it has real economic harm, not only to TQ Delta
15 but other market competitors. They tried to get out in front
16 of that and say, we're being discriminated against, we're at a
17 competitive disadvantage from Zhone and ZyXEL.

18 Well, that's because you're infringing and you didn't
19 take a license. Those other companies are paying the royalty
20 rates. They're the ones that are competitively disadvantaged
21 because now you can sell products cheaper than they can
22 without the overhead of the licenses you need to make those
23 products in the first place.

24 Doctor Putnam walked through this analysis. He showed
25 where CommScope has a competitive advantage, that it took

1 sales from competitors, licenses -- that TQ Delta's licensees
2 make fewer sales. TQ Delta would get fewer royalties, and
3 CommScope's royalties are delayed. You're able to model that
4 economically, and he modeled it at \$7.4 million.

5 You are entitled to award that if you feel it's
6 appropriate. We're not asking for that, but if you feel that
7 that's appropriate, that there's additional harm, you are
8 certainly entitled to award that on top of the reasonable
9 royalty.

10 THE COURT: You've used 20 minutes, counsel.

11 MR. DAVIS: Thank you, Your Honor.

12 This is another slide that Doctor Putnam used in his
13 direct examination. And why did he talk about the licenses?
14 Well, there's a couple of reasons. Number one is they do
15 provide an indication of what a reasonable royalty in this
16 case should be, and the license that he found to be most
17 comparable was the Nokia license. Why is that? Because Nokia
18 was taking a U.S.-only license, they were paying \$2.52 a unit,
19 they're in the same market, they make consumer office devices,
20 the same standards are at issue, and the same damages period
21 was at issue.

22 The Siemens/Infineon/Lantiq license that CommScope is
23 relying on is not comparable. It deals with a single
24 standard. It deals with semiconductor chips. The payment
25 amounts were unknown. The units were unknown. It resulted in

1 a one to 6 percent price and it took with it -- it carried
2 with it a 10-year relationship before that license was even
3 negotiated to.

4 So when looking at licenses, which one would be most
5 comparable? It would be the Nokia license. And not only
6 that, the Nokia license is relevant -- CommScope believes the
7 Nokia license is relevant because it shows that our rates are
8 somehow too high.

9 They say, well, Nokia, you know, you really licensed the
10 rest of the world. You really licensed the rest of the world
11 with that so that rate is just, I think they called it, window
12 dressing. Comm -- they knew that we were coming to trial.

13 Well, you know, there's no evidence of that. That's just
14 attorney argument.

15 The fact is a sophisticated company, Nokia, who has a
16 massive standard essential patent portfolio, who knows how to
17 license standard essential patents, do you think they would
18 just agree to some sort of window dressing? Do you think they
19 would just try to dress this up and, you know -- no.

20 What happened was the parties were in negotiations, they
21 decided to resolve one part of their dispute, which was the
22 U.S.-only, and they agreed to a stand-still for the rest of
23 the world for a period of four years.

24 Now, the only way that CommScope could explain that was
25 to come up with a theory that -- to try to inject evidence

1 into the case about statutes of limitations in other
2 countries. You heard Doctor Becker try to slip that in: Oh,
3 I know that in Germany the statute of limitations expires in
4 four years.

5 He has no evidence of that. That wasn't in his report.
6 He just said it. He doesn't know when the statute of
7 limitations expires in these other countries.

8 We know, I know, it is different from country to country,
9 and we don't even have patents in every country. So if he's
10 referring to a country where we don't have patents, that's
11 irrelevant. Japan is 20 years.

12 Why were they doing that? Why are they making this trial
13 about that? This is a patent infringement case. Because they
14 have to explain away all these facts.

15 The other licenses show that TQ Delta's royalty
16 offers -- excuse me -- FRAND offers for its standard essential
17 patents to others in the market show that it has acted fair
18 and reasonably and non-discriminatory. These other market
19 participants similarly-situated to CommScope paid what TQ
20 Delta offered to CommScope.

21 Yeah, sure, there were some differences. There were some
22 -- two of them got a discount, early mover discount, sure.
23 Don't you think if CommScope had engaged with us in 2013, they
24 would have gotten that? Well, we don't know because they held
25 out and delayed for 10 years. So they're not even

1 similarly-situated to the parties that did get a discount.

2 Finally, you heard a lot about the chip. You heard a
3 lot -- CommScope's trying to get you to focus on the chip, the
4 Broadcom chip in the devices.

5 Ladies and gentlemen, in order to be able to do that, to
6 perform that analysis to say that, hey, the smallest saleable
7 patent-practicing unit that would justify using a starting
8 cost from which to apportion down to a royalty is \$10 instead
9 of a hundred dollars.

10 That's the reason they want you to focus on the chip. It
11 requires an analysis of the claims. It requires you to
12 show -- to prove that that chip actually practices all the
13 patents -- practices every claim of all the patents, every
14 element. It's an infringement analysis. And they didn't
15 bring it to you.

16 Doctor Becker just got up there and said, I had a
17 conversation with some experts and they said it was.

18 That's not sufficient. It's disingenuous to come into
19 court, after all of this time, after all of this effort, and
20 not do the work to support their own damages model? It's
21 frustrating, and I'm sure you saw me get a little frustrated
22 with Doctor Becker, because I don't know whether you
23 understand the significance of that.

24 Because if Doctor Becker gets to say that and you believe
25 it, then, of course, their damages number goes down to \$5

1 million. That's why they've been talking about the chip.

2 That's why Doctor Becker had to admit that the only evidence
3 he had was a phone call with some other expert that didn't
4 come to testify in front of you. That means something, and
5 I'd like you to think about that.

6 I'll have an opportunity to come back up and speak to you
7 with what time I have remaining. For now, I have to sit down,
8 but I do thank you for listening and I'll talk to you again
9 soon.

10 Thank you.

11 THE COURT: Defendants may now present their closing
12 argument to the jury.

13 Mr. Dacus, would you like a warning on your time?

14 MR. DACUS: Please, Your Honor. If you would let me
15 know if I have five minutes left, and if I get there, would
16 you please let me know if I have one minute.

17 THE COURT: I will. You may proceed with
18 Defendants' closing argument when you're ready.

19 MR. DACUS: Thank you, Your Honor.

20 I'll start today where I started with you last Friday,
21 and that is to say, on behalf of the men and women who work at
22 CommScope, a very sincere thank you. As I told you then, it's
23 not lost on us what an effort this has been for you. And I
24 told you then we would not be here if this case was not very
25 important to CommScope. You probably know a little bit more

1 about why I said it at that time.

2 I also said to you then we believe that this case has
3 broader importance than just CommScope. What you see on the
4 screen is our Constitution. It's Article I, Section 8, that
5 actually created our patent system. And the reason the
6 founders created the patent system was for the promotion of
7 the progress of science. And I'll tell you, from CommScope's
8 perspective, we don't believe that this lawsuit and what's
9 gone on in this courtroom is about the promotion of the
10 progress of science.

11 This case has another piece of broader importance, and
12 it's probably something you didn't know much about before you
13 came to court, and that is the standard-setting organizations.
14 These standards are all around us--wall plugs, our cars,
15 phones. They're everywhere.

16 And important in that standard-setting process is this
17 promise that those who participate in those organizations
18 agree that, if they have a patent, that they will license them
19 on non-discriminatory and reasonable terms. And we're going
20 to talk a lot about that in the next 30 minutes or so.

21 You know, the last five days I'm confident have been to
22 you like drinking water through a fire hose. You have gotten
23 a lot of information. And sometimes it's good just to step
24 back and look at things from a 30,000-foot level. When
25 you go home tonight and the Court final releases you to

1 actually talk about this case and you sit down to have a cup
2 of coffee with your spouse or your parents or your friends or
3 have a hamburger with them, and they're going to ask you what
4 the case is about.

5 And I assume you are going to say, well, this company TQ
6 Delta sued this company CommScope. CommScope makes a CPE
7 modem device, and what TQ Delta sued them over was this
8 semiconductor chip made by a company named Broadcom that
9 CommScope buys from Broadcom.

10 Now, there's been a lot of discussion about is this
11 really about the chip. Think about every expert that took the
12 stand on behalf of TQ Delta. What did they look at? They
13 looked at the source code for the chip. That's what's really
14 accused of infringing is the chip.

15 You're also going to say to whoever you're sitting with
16 having a hamburger or a cup of coffee, what this TQ Delta
17 company wanted was \$89 million from CommScope related to
18 savings that AT&T had, not savings that CommScope had, but
19 savings related to AT&T.

20 And on top of that, the way they calculated those AT&T
21 savings and tried to attribute those to CommScope was through
22 this thing called this Derwent knockout word process that
23 included words that the people who actually implemented it
24 didn't even know, had never even heard of. In fact, no one in
25 the courtroom had probably ever heard of those words. And

1 somehow they reduced 15,000 standard essential patents down to
2 71.

3 And I suspect when you have that conversation, the person
4 sitting across from you is going to scratch their head a
5 little bit about that.

6 Let's talk about this promise that TQ Delta and Aware
7 made to the ITU. You know, and I don't need to belabor it,
8 it's absolutely of the utmost importance to standard-setting
9 organizations and how they operate to prevent people from
10 holding up -- if you're a patent holder or a patent owner, the
11 standard-setting organization like the ITU is attempting to
12 prevent you as a user, either a maker or a consumer, from
13 being held up for unreasonable amounts of money in the future.

14 The way the ITU requires that you do that is to sign
15 a contract and a promise that says you won't discriminate
16 against anyone on any basis and that you agree to license on
17 reasonable terms.

18 Now, we all know what discriminate means. That means you
19 can't treat people unequally. But you really don't have to
20 take that from me. I put together what four of the TQ Delta
21 witnesses said non-discriminatory means.

22 Their lawyer said in opening it means you have to be fair
23 and consistent to each company. Ms. Divine said you cannot
24 advantage one company over another. Doctor Putnam said
25 requires that CommScope not be placed at a competitive

1 disadvantage to its competitors. Doctor Michael Tzannes said,
2 we have to be consistent in the rates that we grant to people
3 who want our patents.

4 That's the standard against which you're measuring their
5 conduct in this case and the amount of money that they've
6 offered and are seeking.

7 And we know this is an important obligation because when
8 Aware made the decision -- when their business started to
9 decline and they made the decision to sell these patents, they
10 said to the world--this is Exhibit 81 when you go back in the
11 jury room--they said, hey, we're selling these patents, but
12 they have a FRAND obligation with them, and be aware we've
13 already licensed these two times. That's what they told the
14 world, and they knew it was important because they'd already
15 set the FRAND rate.

16 You remember when the Judge said to you in preliminary
17 instructions and just now, compare what some witnesses say on
18 the witness stand to what they wrote or said in the past.

19 So Mr. Tzannes took the stand here and said, well, this
20 license agreements that we had with Infineon and Lantiq, don't
21 look at those, we would have probably licensed on different
22 terms. That's what they said now that they have an \$800,000 a
23 year lawsuit consultant.

24 What they said in the day before they thought it would be
25 in a court of law, they said this FRAND obligation is really

1 important, and if you buy these patents, you got to live up to
2 that promise.

3 We know that they were selling the patents because
4 they're licensing revenue--that's the primary way they made
5 money--was declining because the DSL business was declining.

6 We know that in 2012, TQ Delta decided that it would buy
7 those patents. So it put together a group, paid 16 million
8 for approximately 148 patents, roughly \$100,000 a patent, in a
9 declining business. They decided to take the risk and to take
10 the gamble to see if they could make money. But they did that
11 with their eyes wide open.

12 And we know they did it with their eyes wide open because
13 in Exhibit 78 at page 65, which is the valuation that they had
14 their company Stout do, Stout told them, If you go out and
15 take these patents and you seek to prosecute them in courts,
16 you got about a 25 percent chance of success, a one-in-four
17 chance of success. TQ Delta was undeterred.

18 This has been a while. I know we looked at this exhibit
19 on Monday. It's Exhibit 79. Ms. Divine testified about it.
20 This is the document where she was evaluating with and talking
21 to her investors and telling them how much money she believed
22 they could make by licensing the entire DSL industry. And
23 what she said is, we think we can make somewhere between \$85
24 million and \$95 million by licensing the entire industry.

25 Now, that's important, and I'll tell you why. That's

1 Exhibit 79 when you go back there. For those of you that take
2 notes, you're welcome to look at it.

3 And we asked -- I asked Ms. Divine, at the time you told
4 them 85 to 95 million, that was an expectation that someone
5 putting in money would make somewhere around four times the
6 money they put in. Correct?

7 She said, I believe that's true at the point in time this
8 was written.

9 That's important for this reason -- and you remember the
10 very first question that I asked in jury selection. You've
11 probably forgotten last Friday, but the very first question I
12 asked was, do you think it's important to keep your promises?
13 And then I stood a couple of people up and said, well, what if
14 you could make a little more money by breaking your promise?
15 Do you think it would be okay to break your promise? And of
16 course they said no.

17 And then I asked the entire panel, does anyone here on
18 the panel believe that it would be appropriate or right to
19 break your promise just because you can make more money? And,
20 of course, no one raised their hand. Of course that's not
21 right.

22 We now know from the evidence that the total amount of
23 money that TQ Delta has received in royalties is \$27 million.
24 And, of course, they're at the end of this DSL campaign of
25 soliciting or trying to prosecute these patents and bringing

1 lawsuits against everyone in the industry. So they're about
2 \$70 million short from what they told their investors they
3 would receive.

4 But that's not a reason that you get to break your RAND
5 promise. You don't get to break your original promise simply
6 because you promised others something different.

7 In 2017, TQ Delta sent us this demand letter, as you
8 know, asking us to pay what they called the standard rates,
9 the \$1.85.

10 You know that that is not the standard rate. You know
11 that, and you can look when you go back in the jury room at
12 Exhibit 78, you can look on page 16, you can look at Exhibit A
13 on page 16, and you will know what they charged ZyXEL.

14 Now, remember, ZyXEL is the largest company, biggest
15 competitor in this industry. TQ Delta is saying to us, pay
16 \$1.85. That's not RAND. They have an obligation not to
17 discriminate.

18 First of all, we've got Infineon and Lantiq. We know
19 they paid much less. We also know our largest competitor, our
20 largest competitor, they gave a 25 percent discount to and
21 further a 79. On top of the 25, an additional 79 in some
22 years. And they say, well, those are -- those are just --
23 those are just adjustments, those aren't real discounts.

24 I don't need to tell you. What we're supposed to be
25 doing is looking and seeing what other people paid for these

1 licenses and whether or not they're requiring and
2 discriminating against us to make us pay more. And of course
3 they are. Of course they are. You can -- if you have any
4 doubt about what was actually paid under that license, we've
5 talked a lot about it, you can go look at it. You can see for
6 yourself exactly what our largest competitor paid. It's ten
7 times less than what they're asking from us in this lawsuit.

8 In 2020 we responded to them and said, look, you heard
9 Mr. Wauters say CommScope has no desire to be in a fight in a
10 lawsuit where it's taking away from their business. CommScope
11 is a company of engineers that makes products, makes products
12 to the best of their ability. They have no desire to be in
13 this courtroom or any courtroom.

14 So in 2020 we sent an offer to them. It was creative,
15 and we said, look, we'll pay you four-and-a-half million
16 dollars, but the way we'll do it is we have some of our own
17 patents that we think other people might use, maybe we can
18 find a creative way to resolve it.

19 What we also said to them is, we don't want you using
20 this in the courthouse to try to convince a jury that we did
21 something wrong just because we're trying to work out a
22 business solution.

23 We now know that they didn't keep that promise, either.
24 Ultimately, they filed a lawsuit against us because we
25 wouldn't agree to the \$1.85, and in this lawsuit they seek

1 \$2.99 for each unit for a total of \$89 million. That's not
2 FRAND. That's not RAND.

3 I want to pause here for a second about this \$2.99. The
4 jury instruction that the Court just read you says that the
5 royalty cannot exceed the RAND obligation. When you go back
6 there, the Court said you'll have your own copy. Look on page
7 29.

8 So this RAND promise has two purposes in this lawsuit.
9 One is we claim they breached it, and we have a breach of
10 contract; and, two, any amount of money, if you get to that
11 point of awarding, cannot exceed the amount of the RAND. In
12 other words, they can't charge us more -- they can't
13 discriminate against and charge us more than they did other
14 people in the industry.

15 And I asked Doctor Putnam about this. "Do you
16 understand, sir, that damages in this case are constrained by
17 the RAND obligation?"

18 He said, "No, I firmly disagree with that."

19 I said, "Let's be really clear here. You have done your
20 work in this case under the assumption that RAND does not
21 constrain the damages to be awarded. Is that true?"

22 He said, "That's right."

23 Look at page 29 in the Court's instructions. What he did
24 is absolutely contrary to what the Judge has instructed you
25 the law is. If you adopt in any way the method and the

1 damages that Doctor Putnam put down, you have to absolutely
2 disregard the instructions the Court just gave you, because he
3 did not constrain himself by RAND and the Court has told you
4 unequivocally that you cannot exceed that RAND rate.

5 When you go back in the jury room, you're going to be
6 asked, did we prove to you that TQ Delta breached its duty to
7 grant licenses on a fair, reasonable, and non-discriminatory
8 term. It's your decision to make. But certainly there's
9 nothing about \$2.99 or \$1.85 that in any way is not
10 non-discriminatory. It's absolutely discriminatory and not
11 reasonable.

12 You're also going to be asked, what sum of money would
13 compensate us for that breach. We're not here about money.
14 We're not here asking for a bunch of money. We will leave
15 that totally to your discretion.

16 You've heard Mr. Wauters explain that it's caused a huge
17 disruption at CommScope. We get it. They've had to spend
18 time, effort, and money responding to this, these claims that
19 are absolutely in breach of the RAND obligation. You heard
20 the Judge say that you can -- you have the discretion to award
21 whatever you want to award here. You can even award nominal
22 damages, \$1.

23 We do -- it is important to us that you find that TQ
24 Delta breached this agreement and that you award some amount
25 of money, but how much we will leave totally in your

1 discretion.

2 Now, on this FRAND issue, we've heard a bunch of excuses,
3 and I think we should review them and address them.

4 What you've heard from TQ Delta is they've said, well,
5 the Infineon and the Lantiq agreements, those were our
6 friends, those were our joint development partners, so we gave
7 them a smaller rate and so you shouldn't look at it.

8 Folks, that -- that is the absolute purpose behind the
9 RAND agreement. You can't give a better deal to your friends
10 and your joint development partners than you give to other
11 people in the industry.

12 They've said, well, we gave your direct competitors like
13 ZyXEL, we didn't really give them a discount, we just gave
14 them adjustments and those were pre-paid adjustments and first
15 mover adjustments, even though they are actually the fourth
16 mover.

17 You can look in the RAND agreement. It's -- Exhibit 68
18 is the actual agreement. And then the guidelines -- remember
19 there's those 10-page guidelines. That's Exhibit 85 and 86.
20 And you won't find anything that allows for these
21 pre-payments, pre-paid judgments, anything along those lines.
22 All it says is don't discriminate, don't charge one company
23 one rate and another company another.

24 They came to court. Doctor Putnam said, look, I'm going
25 to charge you this 60 percent upcharge over and above the

1 \$1.85 to get to the \$2.99. You now know from the Court that
2 is not allowed. That is absolutely not allowed under the law.
3 You can have to charge only the RAND rate.

4 Finally, I want to address this issue. They've pointed a
5 couple of times to say in that RAND contract that it applies
6 to applicants. But let's be clear how it works because the
7 Judge has been very clear here. CommScope is not a party to
8 that ITU agreement or that ITU contract. TQ Delta and Aware
9 were and ITU. So this is a very special situation.

10 And the Court read you an instruction, and he said in his
11 preliminary instruction and today CommScope is a third-party
12 beneficiary of that contract. We don't have any obligations.
13 We just get the benefit. Like not only us but anyone who uses
14 the standard gets the benefit.

15 We just heard, as we've heard all week, that we didn't
16 engage in negotiations, we didn't provide sales data. That's
17 not our obligation. We don't have any obligation. The only
18 obligation under FRAND is for TQ Delta to provide us with a
19 rate that is non-discriminatory.

20 They've never done it. They have never done it. That is
21 the only obligation. The Court's told you that. We're the
22 third-party beneficiary. We're not the party to that
23 contract. We don't have obligations under it.

24 I want to talk for a few minutes about non-infringement.
25 And I'll apologize up front because I certainly cannot cover

1 everything that you heard from the stand, but I think there
2 are some important points, particularly for -- as we go
3 through here, to remind you of what the key issues were.

4 On this '048 Patent, that's the patent that requires a
5 maximum memory, and it's the patent where TQ Delta wants you
6 to believe that time delay is the same as memory.

7 Under the old VDSL1 standard--that's not what's at issue
8 here; VDSL2 is at issue here--it required this maximum or
9 maximal interleaver memory. But then for VDSL2, which is at
10 issue here, Texas Instruments did make a proposal, and they
11 said something very clearly that's important. So if you're
12 wondering is time delay the same as memory, you don't have to
13 rely on us, you don't have to rely on TQ Delta. Texas
14 Instruments said, in VDSL2, it's going to be specified in
15 terms of time delay, not in terms of memory. Those are two
16 separate things.

17 Now, let's talk about this because it's been said two
18 different times that Texas Instruments, actually the proposal
19 they made was not adopted into VDSL2 and somehow I
20 misrepresented that.

21 Let's be really, really clear what's going on here. So
22 right up here it says LB-031. That was the actual proposal
23 that Texas Instruments made. And so sort of the pump fake
24 that's going on is, at that particular meeting, LB-031 was not
25 adopted into VDSL2. That's a true statement.

1 But at the next meeting the Texas Instruments proposal,
2 this max_delay_octet where time delay does not equal memory,
3 was adopted verbatim. So if you paid attention to the
4 questions that were being asked, I said to you in opening the
5 Texas Instruments proposal in concept was adopted. It was.

6 What they asked the witness and what they just showed you
7 was LB-031 adopted. No, it wasn't, because that was the
8 meeting before VDSL2. But every bit of this was adopted into
9 the standard. And if you don't believe me, when you go back
10 to the jury room, look at Exhibit 34, look at table 12-56, and
11 you'll see that that Texas Instruments recommendation was
12 adopted into VDSL2, and it says, time delay does not equal
13 memory. And here that means there is no infringement.

14 Now, for the '411 Patent, it's really the same issue.
15 The '048 and the '411, by the way, are the two patents that TQ
16 Delta absolutely agrees are not essential. They don't even
17 dispute that. These are not essential patents.

18 The '411 has the same issue, does time delay equal
19 memory. You can decide these the same. Whichever way you go
20 on infringement for the '048, it's the same issue for the '411
21 Patent.

22 Let's talk about the '354, the R-O-C or ROC patent. Ben
23 Miller came and testified before you. He's the gentleman at
24 CommScope who writes the programming code, what we call the
25 source code. He doesn't need to test it. He can look at it,

1 he knows, he's responsible for it.

2 And what he said with respect to ROC, has this feature
3 been off?

4 Yes, it's been off since at least 2012.

5 In addition, has any customer like AT&T or any customer
6 asked for it to be turned on?

7 No.

8 So no wonder it's turned off. No customer's asking for
9 it. It's turned off. If it's turned off, that means we don't
10 infringe. We don't use this '354 ROC patent.

11 But the proof goes further. You remember that when Mr.
12 Stevens -- actually, I think it was Mr. Barton was
13 cross-examining their witness, Doctor Brody. Doctor Brody
14 said, well, we had this other expert, Doctor Cooklev, who did
15 some testing on this ROC, and what the testing showed--this is
16 TQ Delta's testing that they're so proud of--is that this ROC
17 feature is not supported. Their own testing proves it.

18 So what we know from that is the '354 Patent is also not
19 infringed.

20 What about the '008? What do we know about that? That's
21 the patent -- you're looking at the patent on the bottom of
22 the screen. That's the patent that requires a phase shift for
23 each carrier signal and then a phase shift computed for each
24 respective carrier signal.

25 This is the patent where Mr. Stevens was asking their

1 expert to agree that a 90-degree turn on the clock, that's
2 what phase shift means, rotating on the clock, that's this
3 patent.

4 The standard -- and, by the way, I heard counsel say, oh,
5 they don't -- they don't point to their products.

6 We don't have to point to the products. Remember what
7 the claim is here. They say that because we use the standard,
8 we infringe. So all we need to look at is the standard.

9 So what does the standard say about whether phase shift
10 is computed for each respective carrier signal? The standard
11 says, the sub-carrier with index 0 shall not be rotated.

12 So let me put a finer point on this. In the standard,
13 there are four sub-carriers--0, pi over two, pi, or 3 pi over
14 2. That's the four sub-carriers in the standard. The claim
15 says each one of those has to be shifted. This one says --
16 the standard says don't shift one. You're only shifting three
17 out of four. That's different than shifting each one. That
18 claim is not infringed. The standard is different from what
19 the claim requires.

20 Remember our football and our soccer ball. You can't say
21 in the standard or in the patent that each and every one have
22 to be rotated and then have the standard say we only do three
23 out of four. That's non-infringement.

24 Claim 36 of the '686 Patent. This is the patent that
25 requires that symbols be mapped to bits. Symbols mapped to

1 bits. The standard says just the opposite--map bits to
2 sub-carriers. Sub-carriers are symbols.

3 And we know they're symbols because Doctor Brody, TQ
4 Delta's expert, when asked, "So what the standard that you
5 were talking about actually says is the mapping of bits to
6 sub-carriers. In other words, the standard requires you map
7 the bits to symbols. Is that right?

8 "Standard says that one information bit per DMT
9 symbol."

10 So the standard says bit to symbol. Patent says symbol
11 to bit. 180 degrees' opposite.

12 And we said to Doctor Brody, Mr. Stevens said, "Doctor
13 Brody, that's different.

14 "Yep, it's different."

15 Soccer ball, football, 180 degrees' opposite. The '686
16 Patent claim 36 is not infringed.

17 I asked Doctor Putnam about this. This is that loop --
18 this patent is actually the loop diagnostic test. That's how
19 we've referred to it.

20 And I asked Doctor Putnam, I said, "Doctor Putnam, does
21 AT&T even use this loop diagnostic test that you claim is so
22 important?

23 "I don't have an opinion."

24 So think about what's going on here. He sat there and
25 heard their own expert say mapping bit to symbol is different

1 from symbol to map, and then you try to get him to say, well,
2 do you-all claim infringement, do you claim that AT&T actually
3 uses this in the CommScope products? I don't have an opinion
4 on that.

5 And he's the man that's supposed to be valuing this --
6 this loop diagnostic test. How can he say -- how can he put a
7 value on something that he doesn't even know if they use?

8 '881 Patent. I'll be candid to you on this one. This is
9 one that is sometimes tough for me to -- to get a grasp on.
10 So the claim requires -- the important part of the claim
11 requires, reduce a difference in latency. That's what the
12 patent requires, reduce a difference in latency.

13 Tq Delta points to the standard and says the standard
14 operates the same way.

15 Not exactly. The standard says control the maximum
16 latency. Here's -- and you'll remember that what we put up as
17 an example was the difference between reducing your speed in a
18 vehicle, for example, and just controlling your speed. And
19 I'll be honest with you, I said to my folks, I'm not sure I
20 get that.

21 Here -- here is how I would explain it. The patent
22 says -- remember this is dealing with the two wires or the two
23 lines coming into a house and the bonding. And this is -- the
24 patent is trying to reduce the difference in latency. So the
25 way I think about it with my two hands is this is what the

1 patent requires--reducing the difference between my hands,
2 reducing the difference in latency.

3 But what the standard says is something very different.
4 The standard says, when you have this difference in latency,
5 we're just controlling the maximum, like how -- how -- how big
6 it can be. That's very different. The standard is very
7 different, controlling the maximum versus reducing the
8 difference. And because of that, there is no infringement of
9 the '881 Patent.

10 Let me say a few things about invalidity. And this is
11 tough because you heard the amount of effort and time that we
12 put into invalidity in having experts testify about it because
13 we have to show you that this stuff is not new. I want to hit
14 some of the highlights.

15 We claim four of these patents should have never been
16 issued. They are not new concepts. For the '686 and the
17 '048, TQ Delta did not even put up an expert to rebut what we
18 said. They put forward no expert. We put forward proof.
19 They put forward no expert on those two patents.

20 The '686, that's the same claim where symbols are mapped
21 to bits, and then you have this idle channel noise
22 information. This is the one that I showed you in opening
23 where AT&T had the exact concept that they introduced in the
24 standard, the old ADSL standard, the one that claimed VDSL,
25 and we don't have to guess about this because their own

1 inventors agreed.

2 You saw their video depositions. Dr. David Krinsky, Did
3 you invent the concept of idle channel noise information
4 testing? And remember I told you in opening watch his video
5 because when he says probably not, he says it in a way like
6 it's absurd to say that I did. And you saw that. He didn't
7 invent that. He didn't -- that's not a new concept.

8 And then we asked the other inventor, Mr. Pizzano. He
9 said, we used the one bit per symbol messaging scheme.

10 And then we said, that you pulled from the ITU standard?

11 And he said, we reused existing standardized symbols,
12 correct.

13 The opposite of what's new. Not new at all. This patent
14 should not have been issued. They didn't bring forward an
15 expert to even rebut that issue.

16 Then you have the '048 Patent, the second one where they
17 didn't bring an expert. This is the one where the patent
18 Mazzoni actually disclosed everything that's in the '048
19 Patent except for one thing that I'll show you.

20 So this is a patent that deals with a system that
21 allocates shared memory, shared memory between an interleaver
22 and a deinterleaver. So in the Mazzoni patent, you got
23 interleaver and deinterleaver, and you got MM, which is shared
24 memory. You have exactly what the patent requires. You saw
25 our expert walk through that in detail.

1 And then on that same patent, what TQ Delta did is say,
2 well, you've got this limitation that requires transmitting or
3 receiving a message during initialization specifying a maximum
4 number of bytes of memory, and that's not in Mazzoni.

5 It may be true, but it's in the VDSL1 standard which came
6 before the patent. It's that maximal interleaver memory. All
7 of the concepts in the '048 Patent were contained in the
8 Mazzoni patent and in the VDSL1. That patent should have
9 never been issued and is invalid.

10 The '008 Patent, same thing, it's the phase scrambling
11 patent. This concept was not new. The whole issue here boils
12 down to whether or not this scrambler is in the transmitter
13 system and whether or not there's a random number generator.
14 I know they want to talk about connected, but the issue is,
15 was there this random number generator.

16 Again, we don't have to guess. This that I'm showing you
17 right here, this was what was in the prior art. This is what
18 people had done before the '008 Patent.

19 We also don't have to guess because we asked Doctor
20 Madisetti: Pseudorandom number generators were known before
21 Aware or Mr. Tzannes went to the Patent Office. Is that
22 right?

23 Absolutely that's right.

24 That patent is, likewise, invalid.

25 Finally, the '835 Patent. The '835 Patent, this is the

1 entirety of the claim language. The only thing that TQ Delta
2 could bring themselves to contest was this one limitation to
3 say, well, the things that were -- that were old, they didn't
4 have actually a flag signal.

5 But we know that's not correct. We know that's not
6 correct because in the old ADSL standard that came before VDSL
7 and came before this patent, it has this right here, this
8 thing called a DRA_swap_request.

9 THE COURT: You have five minutes remaining.

10 MR. DACUS: Thank you, Your Honor.

11 That DRA_swap_request is exactly a flag signal, and
12 because of that, that patent is likewise invalid.

13 Let me spend a little bit of time on damages. You heard
14 a lot from Doctor Becker yesterday so I'm not going to belabor
15 that. I'm sure that's fresh in your mind.

16 I want to say a couple of things about Doctor Putnam and
17 what he did. What he did is take savings from AT&T, from
18 AT&T, and attempt to make us pay for those. Just step back
19 and think about that. That's -- that shouldn't be valid in
20 any industry, not just this industry, but it doesn't make
21 sense. You're trying to make us pay for savings from AT&T.

22 The law, as Mr. Davis just put up, is what you're
23 supposed to assess is the benefit that, if any, to the
24 infringer, to CommScope, not to the carrier like AT&T.

25 What he also did, in addition to the Derwent, is he

1 assessed, he being Mr. Putnam, assessed patent damages on a
2 per-family basis. When you read the instructions, go look at
3 page 28 and 29 of those instructions. You're supposed to be
4 only assessing the value of the specific seven patents, not
5 the family. The family contains many, many patents in it.
6 He's asking you to value many patents rather than the
7 one--again, asking you to disregard what the Court asked you
8 to do.

9 We know from Doctor Putnam that the most reliable
10 indicator of a patent's value for a royalty are the royalties
11 that were paid by others.

12 Doctor Becker walked you through the Lantiq and the
13 Infineon agreements. And we know that, once the Lantiq and
14 the Infineon agreements were set, that establishes a royalty
15 under RAND and it establishes a reasonable royalty under any
16 sort of analysis. That's the licenses that we're supposed to
17 look to.

18 Doctor Becker walked you through those. He showed you
19 that those agreements were actually for 150 patents, not just
20 seven. He walked you through exactly when you apportion, like
21 you're supposed to under the law, it comes to 1.57 to 2.91
22 percent of the chip cost, because that's what's at issue.
23 When you apply that percentage, as he showed you yesterday,
24 that total number is \$5.7 million. And that's for all seven
25 patents, 5.7.

1 So if you find any patent that's not infringed or is
2 invalid, you'd need to reduce one-seventh accordingly because
3 we have seven patents.

4 At the end of the day, that hypothetical negotiation
5 would have resulted in \$5.76 million as a RAND royalty, as a
6 reasonable royalty, if you find all seven patents infringed
7 and valid.

8 There's another thing I want to say about these licenses.
9 Remember the purpose here. We're supposed to be looking to
10 see what people would pay in the industry. We're constrained
11 by RAND. You can't discriminate against our -- us against our
12 biggest competitor. Our biggest competitor paid \$8.9 million
13 for a hundred patents, including these seven; not just any
14 hundred, including these seven, for the right to produce an
15 unlimited number of products.

16 The way I think about this is that has to be the absolute
17 ceiling of what we should pay, the absolute ceiling of what we
18 should pay, if you even get to the damages number.

19 THE COURT: You have one minute remaining.

20 MR. DACUS: Thank you, Your Honor.

21 This Nokia agreement, you've heard all about it. This
22 \$14.9 million, that was paid after they initially demanded
23 250-. \$250 million was their original demand to Nokia. Nokia
24 sells different products.

25 I'm going to have to sit down, but here's what I'm going

1 to ask you to do. This -- this conduct that's in this
2 courtroom that's occurred in this lawsuit is not the promotion
3 of science. This conduct needs to stop. I can't stop it, the
4 folks at CommScope can't stop it. Only you can stop it. And
5 it needs to be stopped now.

6 And here's how we know it needs to be stopped now. Ms.
7 Divine, when her lawyer asked her on the stand, how will TQ
8 Delta be able to address CommScope's worldwide infringement?

9 "We're going to go country to country." That's what she
10 said. "We're going to go country to country asking for these
11 types of damages."

12 THE COURT: Your time's expired, counsel.

13 MR. DACUS: Thank you, Your Honor.

14 THE COURT: Take just a second and finish up.

15 MR. DACUS: I'll be happy to, Your Honor. Thank
16 you.

17 Thank you very much for your time and attention this
18 week. Our thank you to you is -- is not conditional. It's
19 unequivocal. No matter what your verdict is, we realize
20 you've taken time out of your life, and we're very
21 appreciative for it.

22 Thank you, Your Honor.

23 THE COURT: All right. Plaintiff, you may present
24 your second and final closing.

25 MR. DAVIS: Thank you, Your Honor.

1 THE COURT: You have 14 minutes and 10 seconds left,
2 Mr. Dacus [sic]. Would you like some warning on this time?

3 MR. DAVIS: Yes, Your Honor. May I have a warning
4 when I have four minutes remaining?

5 THE COURT: I'll remind you when you have four
6 minutes remaining.

7 MR. DAVIS: Thank you.

8 Ms. Brunson, could I please have the elmo for a minute?
9 Thank you.

10 This is a slide -- I want to address a few points that
11 Mr. Dacus just addressed on infringement. This relates to
12 memory being time delay. This is from the standard.

13 The O-PMS message, which is what we pointed to, what
14 Doctor Cooklev pointed to, specifies the portion of shared
15 interleaver memory that the VTU-R, the receiver, can use to
16 deinterleave the downstream data stream.

17 It doesn't say that it's delay. It says it's memory.
18 They're playing a word game with you to try to say that
19 something in a computer isn't involved in memory. Think about
20 that for a second. Trying to say that the bits and the bytes
21 that express how to allocate memory between one function and
22 another isn't in memory.

23 Everything's in memory. And this right here -- I mean,
24 it says it right here: specifies that the portion of shared
25 interleaver memory. Time is not memory. Memory is memory.

1 Could I have Exhibit 78, please, Mr. Diaz?

2 You've seen this document a lot. This is the
3 ZyXEL -- I'm sorry. Not 78.

4 Well, I can just tell you about it. Mr. Dacus showed you
5 about the ZyXEL agreement, and he said, they got a 79 percent
6 discount.

7 I'd like you to look at that agreement. I'd like you to
8 look at the structure in Exhibit A of that agreement because
9 it lays out at the top what the rates are. The very next
10 exhibit are the units, and it lays out line-by-line how to
11 calculate the rate.

12 And what you're going to find is that the biggest
13 difference between the ZyXEL agreement and CommScope--here we
14 go--when you look at Exhibit A and you compare it with Exhibit
15 B, is that ZyXEL didn't sell 36 million units.

16 He wants you to focus on the overall amount, I believe
17 \$7.9 million or something that -- the ultimate amount, 6.8,
18 \$8.8 million. Why did they pay less? Because they used less.
19 That's how a royalty works. It's a rate times the number of
20 units. You won't find anywhere in Exhibit A or Exhibit B 36
21 million units of sales. That's why the total dollar amount is
22 less.

23 But the reason it's comparable and the reason it's not
24 discriminatory to CommScope is because ZyXEL paid the rates,
25 the same rates, that TQ Delta offered CommScope. They got

1 their FRAND offer. We've been trying to get them to take a
2 FRAND offer for 10 years.

3 Could I have the bottom part of this, please? And blow
4 up -- yes, right here.

5 This is at the bottom, adjustment for patent expiration
6 and pre-payment of future royalties. It's been called a
7 discount by CommScope this entire case. It's not a discount.
8 Look at what that says--adjustment for patent expiration.
9 We're adjusting for the total number of units that are sold
10 over the -- over the entire life of the patents.

11 But in between the date of this agreement and the date
12 that the last patent expires, other patents are expiring along
13 the way. And as those patents expire, rates fall off. They
14 fall off. That's an adjustment to not overcharge them. It's
15 not a discount off the rate. It's an adjustment to say, hey,
16 look when one of our patents expires, we're no longer going to
17 charge you for it.

18 He's called it a discount this entire trial. It's not a
19 discount.

20 And it's also an adjustment for pre-payment of future
21 royalties. ZyxEL paid in a lump sum. That means TQ Delta got
22 all its money now, very basic economics. When you prepay for
23 something, you reduce the value to the net present value of
24 today's dollars versus dollars in the future. It's not an
25 adjustment off the rates.

1 And that pre-payment of future royalties, if CommScope
2 had taken a license from us in 2013 and they wanted to pay a
3 lump sum based on future projections, they would have gotten
4 the same discount -- I'm sorry. The same pre-payment of
5 future royalties. They would have gotten the same adjustment
6 for patent expiration.

7 The only discount in the ZyXEL agreement is the 25
8 percent discount. It's the only time that the word 'discount'
9 is used. And, frankly, it's insulting that they've been
10 calling these other things discounts this entire trial.

11 If I can go back to the slides, please, Mr. Diaz? And if
12 I could have slide 24, please.

13 I want to remind you where this all started. This all
14 started through the inventive work of Marcos Tzannes. This is
15 a man who's been working in this field for 30 years. This is
16 Marcos at the ITU meeting. He told you about his inventive
17 work.

18 They say that our -- our patents, the patents that Marcos
19 Tzannes invented, the development that Aware did to support
20 him, and now the development and the support that TQ Delta has
21 provided him to continue to develop new standards, they say
22 it's not progress. 200 patents? Do you think the Patent
23 Office got all those wrong? Does that make any sense?

24 Do you think a photo like this would exist of a young
25 Marcos Tzannes standing at the board explaining to all these

1 other members of the industry -- CommScope's in the back of
2 the room. Are they contributing? No. You heard it. They've
3 never contributed a single thing to the ITU. They've never
4 had a single idea adopted into a standard.

5 And not only that, they've never taken a single license
6 to any standard essential patent. They've been using the
7 standards for years and haven't paid anybody on those
8 standards. Who's the one in here telling the truth? Who's
9 the one in here who's broken promises? Who's the one who's
10 taking? Who's the one who's providing? Who's the innovator?
11 Who's the implementor?

12 They are the ones who are using our technology. And for
13 them to say that none of this is progress, that we haven't
14 advanced art or science and to come in here with the kind of
15 analysis they provided and try to take away these patents,
16 wants you to essentially destroy them?

17 Could I have slide 27, please?

18 Let's talk about the promise. You've seen this document
19 a lot. It's Exhibit 68. I do encourage you to look at this
20 because I think the language is very important for you to look
21 at in deciding whether or not the offers that TQ Delta has
22 made to CommScope were reasonable.

23 And I think what you're going to find is that nowhere in
24 this language does it say that when you -- the first time
25 standard essential patents are licensed, that the rate is set

1 for all people all time all eternity. It doesn't say that.
2 What does it say? It says negotiate, that you have to be
3 willing to grant a license to an unrestricted number of
4 applicants. Applicants are people who are applying for
5 something, very basic. They tried to run away from that word
6 just now. And it's worldwide, non-discriminatory, reasonable
7 terms and conditions.

8 Does it say that the first time a license is entered
9 into, the rates are set for all time whether you're a chip
10 company, or a DSL company or someone else down the road? No.
11 It doesn't.

12 It says, hey, these -- it's not as simple as that. You
13 have to take into consideration the facts and the
14 circumstances and the parties and what -- I mean, we're having
15 a negotiation. It's not just there's some license in the
16 past, we get that rate, and if you don't give it to us, you're
17 discriminating against us, and we get to come in here and sue
18 you for a breach, when they're the ones that are infringing,
19 folks. They're the ones that are infringing on United States
20 patents.

21 They've tried to turn this whole thing around and make it
22 about us. Other licenses, the other five licenses show that
23 what we've acted -- because they're market participants, too.
24 They show that the way we've acted is reasonable, that our
25 rates are fair. They're fair to DSL modem makers.

1 It's unfair to us, it's unfair to Aware, it's unfair to
2 the other folks that have taken licenses from us, to go back
3 and say, nope, we, CommScope, since we're the biggest seller,
4 we sell 36 million units, we sold the most, we don't have to
5 pay what all the other folks paid, we get to go all the way
6 back to a relationship that started in 1998, and we get those
7 rates because we like the number that those rates give us.

8 It's not fair and reasonable. And the rates are not set
9 at that point. And that's what they've tried to convince you
10 of is that, oh, the rates are set, we're being discriminated
11 against, we can't compare it, we can't compete with ZyXEL
12 anymore, we can't compete with Zhone.

13 These are the guys that have sold more than anybody.
14 That's why the total amounts that those other folks have paid
15 is so much less than what these guys owe. They're the ones
16 that have had the competitive advantage. They're the ones
17 that sell 90 percent of their products to AT&T.

18 This case is about promises made, and it's about promises
19 that have been kept.

20 THE COURT: Four minutes remaining, counsel.

21 MR. DAVIS: I'm sorry, Your Honor?

22 THE COURT: Four minutes remaining.

23 MR. DAVIS: Thank you, Your Honor.

24 We promised you in opening statements that we would bring
25 you the evidence to show that CommScope is infringing on the

1 patents that are at issue in this case, that these patents are
2 standard essential, that these patents are valid, and we've
3 done that. We've delivered on that promise.

4 And all you've received from CommScope is distractions
5 and delay and -- I mean, it's -- it's -- I agree the conduct
6 that has occurred in this courtroom is not the kind of conduct
7 that should be allowed to take place, and I hope you see that.

8 I know this is complicated. I know you've been drinking
9 through a fire hose. You're trying to understand patents and
10 FRAND and patent law damages, which is, you know, just a mess,
11 frankly. It's -- there -- there's a lot going on there. It's
12 a mess.

13 But I want you to remember what I started with in
14 opening -- in opening statements, and that is that this right
15 that we are all here for, this right to a jury trial, the
16 right of these parties to have members like you decide these
17 issues, it's not just our right; it's -- it's your right.
18 It's your ability to look at the conduct of parties and to
19 decide what you're going to condone and what you're not going
20 to condone.

21 And I submit to you that the conduct of CommScope over
22 the last 10 years, and particularly in the courtroom this
23 week, trying to say that the rates are set, trying to say that
24 time is memory, showing you graphics where the arrow's going
25 down to say that DSL is declining at this precipitous rate,

1 and they're showing you the wrong data, and the slide right
2 after it shows that it's holding pretty steady, there's a
3 little decline but it's holding pretty steady, that's not
4 conduct that should be condoned.

5 You have the ability to send a message. Mr. Wauters has
6 been here all week in court. He took the stand and didn't
7 know anything about this case, at least not when I was asking
8 him questions. And his -- his lawyer got up there, and he
9 knew everything.

10 Mr. Wauters is here, and he has to make a phone call
11 after you return your verdict today. He has to call back to
12 corporate offices and say, hey, we got away with it, keep
13 doing what you're doing, keep carrying on, keep infringing
14 patents, we don't have to pay standard essential patent
15 holders.

16 Are you going to let him make that phone call? Or is he
17 going to have to make another phone call, a phone call that
18 says, we got to change the way we do business, we can't just
19 keep running over other people's patents. I'm asking you to
20 make him make that second phone call.

21 I really appreciate your time. I thank you for
22 everything you've done for this week sitting here listening to
23 all of this. On behalf of everyone in this room, there's one
24 thing we can all agree on is that you guys are the heroes this
25 week, and so I thank you very much. That's all I have.

1 Thank you, Your Honor.

2 THE COURT: Ladies and gentlemen, I have a few final
3 instructions before you begin your deliberations.

4 You must perform your duty as jurors without bias or
5 prejudice as to any party. The law does not permit you to be
6 controlled by sympathy, prejudice, or public opinion. All
7 parties expect that you will carefully and impartially
8 consider all the evidence, follow the law as the Court has
9 given it to you, and reach a just verdict, regardless of the
10 consequences.

11 You should answer each question in the verdict form from
12 the facts as you find them to be, following the Court's
13 instructions about the law. Again, do not decide who you
14 think should win and then answer the questions to reach that
15 result. One more time, let me remind you: Your answers to
16 those questions in the verdict form must be unanimous.

17 You should consider and decide this case as a dispute
18 between persons of equal standing in the community, of equal
19 worth, and holding the same or similar stations in life. This
20 is true in patent cases between corporations, partnerships, or
21 even individuals.

22 A patent owner is entitled to seek to protect its rights
23 under the laws of the United States, and this includes
24 bringing a lawsuit in a United States District Court for
25 infringement, which is what we have here. The law recognizes

1 no distinctions between the types of parties. All parties
2 stand equal before the law.

3 Now, when you retire to the jury room in a few moments to
4 begin your deliberations on your verdict, as I've told you,
5 you're each going to have your own individual printed copy of
6 the lengthy instructions I've given you this morning. You may
7 refer to it throughout your deliberations.

8 You also have your juror notebooks with the
9 patents-in-suit and other materials the Court has given you.
10 You may refer to those throughout your deliberations.

11 If during your deliberations you desire to review any of
12 the exhibits that have been admitted and used during the
13 course of the trial, you should advise me by a written note
14 signed by your foreperson and given to the Court Security
15 Officer who will bring it to me, and I will then send that
16 exhibit or those exhibits to you.

17 As I've told you, demonstratives are not exhibits and I
18 cannot send you demonstratives. I can send you the exhibits
19 the Court has admitted into evidence, if you ask for them.

20 Now, once you retire, you should first select your
21 foreperson and you should then begin your deliberations. And
22 if during your deliberations you recess for any reason, follow
23 all the instructions I've given you about your conduct over
24 the course of the trial.

25 After you have reached a verdict, you've answered each of

1 the questions in the verdict form in a unanimous fashion, then
2 your foreperson should fill in your answers reflecting those
3 unanimous decisions in the questions in the verdict form.
4 Your foreperson should then sign it, date it, and advise the
5 Court Security Officer you've reached a verdict.

6 Until then, you should not reveal your answers until
7 you're discharged by me from your position as jurors unless I
8 instruct you otherwise, and you must never disclose to anyone,
9 not even to me, your numerical division on any unresolved
10 question.

11 Any notes that you've taken over the course of this trial
12 are aids to your memory only. If your memory should differ
13 from your notes, rely on your memory and not your notes. And
14 a juror who has not taken notes should not be overly
15 influenced by the notes of another juror. Notes are to
16 refresh your recollection of the testimony that you've seen
17 and heard, and that's the only reason you should be using
18 them.

19 If at any time during your deliberations you want to
20 communicate with me, you should give a message or a question
21 in writing signed by your foreperson to the Court Security
22 Officer who will bring it to me. I will then respond to you
23 as promptly as possible, either in writing or by having you
24 brought back into the courtroom where I can address you
25 orally. And, remember, I will always first disclose to the

1 attorneys in the case your question and my intended response
2 before I answer any question you may send me in writing.

3 Now, after you've reached a verdict and I've accepted
4 your verdict and discharged you from your position as jurors
5 in this case, at that time, ladies and gentlemen, you are not
6 required to talk with anyone about your service in this case
7 as jurors. By the same token, you will be completely free to
8 talk with anyone about your service as jurors in the case.

9 But whether you talk about it or whether you don't, that
10 decision is yours. It is not anyone else's. It is yours 100
11 percent at that point in time.

12 I'm now going to hand eight printed copies of my final
13 jury -- the Court's final jury instructions and one clean copy
14 of the verdict form to the Court Security Officer to deliver
15 to you in the jury room.

16 Ladies and gentlemen of the jury, you may now retire to
17 the jury room to begin your deliberations. We await your
18 decision.

19 (Whereupon, the jury left the courtroom.)

20 THE COURT: Be seated, please.

21 Before the Court began its final instructions to the jury
22 this morning, I made it abundantly clear to all present that
23 during the Court's final instructions and closing arguments
24 from counsel I did not want any movement in the courtroom, I
25 did not want any disruptions, I wanted everyone to sit still

1 and quietly and be as respectful as possible.

2 Doctor Putnam, you got up in the middle of closing
3 arguments and you walked around to the aisle and sat in
4 another chair and leaned forward and asked whoever it was in
5 front of you to hand you a piece of paper, and then you leaned
6 down and wrote something on it. Then you got up and walked
7 back to the middle of the gallery and sat where you are on the
8 back row. That's in direct violation of my instructions.

9 Now, I don't know if you were here when I gave those
10 instructions, but I'm not required to repeat them every time
11 somebody comes into the courtroom. Those are the rules. You
12 violated them. Don't ever do that in a courtroom in which I
13 am presiding again. I don't want any response. I just want
14 you to hear what I'm having to say.

15 Now, counsel, you are certainly entitled to wait here in
16 the courtroom while the jury deliberates or to have a
17 representative of your trial team wait in the courtroom.
18 You are also welcome to wait at another location where you've
19 been meeting during the course of the trial. I would suggest
20 to you that you not go very far. We may get questions; we may
21 get requests for exhibits. I don't know. You should position
22 yourselves, if you're not here in the courtroom, so that I can
23 get you back here without an undue delay.

24 I have, I believe, good working telephone cell phone
25 numbers for each trial team. You are certainly entitled and

1 welcome to wait here if you choose to do so, but those are the
2 Court's instructions in that regard.

3 Now, awaiting either a question from the jury or a return
4 of their verdict, we stand in recess.

5 (Jury deliberates.)

6 THE COURT: Be seated, please.

7 Counsel, I've received the following note from the jury.
8 I'll read it for the record. It says, "Your Honor, we have
9 reached a verdict." It's signed by Brittanie Lowery,
10 foreperson who, as I recall, was Juror No. 4. I'll mark the
11 note with '1' for identification in the upper right-hand
12 corner, and I'll hand it to the courtroom at this time to be
13 included in the papers of this cause.

14 I'm about to bring in the jury and receive their verdict.
15 Let me remind everyone that the Court expects complete silence
16 no matter what the verdict might be, and no overt reactions
17 either way to what it will be as soon as it's made public.

18 All right. Are either Plaintiff or Defendants aware of
19 anything that should be taken up before I bring in the jury
20 and receive the verdict?

21 MR. DAVIS: No, Your Honor.

22 MR. BARTON: No, Your Honor.

23 THE COURT: All right. Let's bring in the jury,
24 please.

25 (Whereupon, the jury entered the courtroom.)

1 THE COURT: Please be seated, members of the jury.

2 Ms. Lowery, I understand that you are the foreperson of
3 our jury. Is that correct?

4 THE PRESIDING OFFICER: Yes, Your Honor.

5 THE COURT: Has the jury reached a verdict?

6 THE PRESIDING OFFICER: We have, Your Honor.

7 THE COURT: Will you hand the executed verdict form
8 to the Court Security Officer who will bring it to me at the
9 bench?

10 Ladies and gentlemen, I'm going to announce the verdict
11 into the record at this time, and I want to ask each member of
12 the jury to listen very carefully as I do this, because once I
13 have announced the verdict into the record, then I'm going to
14 follow that by polling the jury to ensure that this is, in
15 fact, the unanimous verdict of all eight members of our jury.

16 Turning to the verdict form and beginning on page 4 where
17 Question 1 was submitted to the jury, "Did TQ Delta, the
18 Plaintiff, prove by a preponderance of the evidence that
19 CommScope, the Defendants, infringed any of the following
20 asserted claims?"

21 For claim 17 of the '881 Patent, the jury's answer is
22 yes. For claim 36 of the '686 Patent, the jury's answer is
23 "Yes."

24 For claim 14 of the '008 Patent, the jury's answer is
25 "No."

1 For claim 5 of the '048 Patent, the jury's answer is
2 "Yes."

3 For claim 10 of the '835 Patent, the jury's answer is
4 "Yes."

5 For claim 18 of the '411 Patent, the jury's answer is
6 "Yes."

7 For claim 10 of the '354 Patent, the jury's answer is
8 "Yes."

9 Turning to page 5 of the verdict form wherein Question 2
10 is found, "Did CommScope the Defendants prove by clear and
11 convincing evidence that any of the following asserted claims
12 are invalid?"

13 For claim 36 of the '686 Patent, the jury's answer is
14 "Yes."

15 For claim 14 of the '008 Patent, the jury's answer is
16 "No."

17 For claim 5 of the '048 Patent, the jury's answer is
18 "No."

19 For claim 10 of the '835 Patent, the jury's answer is
20 "Yes."

21 Turning to page 6 where Question 3 is found, "Did TQ
22 Delta, the Plaintiff, prove by a preponderance of the evidence
23 that CommScope, the Defendants, willfully infringed any of the
24 asserted claims that you found were infringed?"

25 The jury's answer is "Yes."

1 Turning to page 7 of the verdict form where Questions 4A
2 and 4B are located, and focusing on Question 4A, which is as
3 follows: "What sum of money, if now paid in cash has TQ
4 Delta, the Plaintiff, proven by a preponderance of the
5 evidence would compensate it for the Defendants' infringement
6 of the asserted claims that you have found to be both
7 infringed and not invalid?"

8 The jury's answer is "\$11,125,000." I'll say that
9 again--\$11,125,000.

10 Turning next to Question 4B, "Is the total amount of the
11 reasonable royalty that you have found in Question 4A a
12 one-time lump sum for past and future sales or a running
13 royalty for past sales only?"

14 The jury's answer is "Lump sum."

15 Turning to page 8 of the verdict form wherein Question 5
16 is found, "Did CommScope, the Defendants, prove by a
17 preponderance of the evidence that TQ Delta, the Plaintiff,
18 breached its contractual duty to grant licenses regarding its
19 standard essential patents to CommScope on fair, reasonable,
20 and non-discriminatory FRAND terms?"

21 The jury's answer is "No."

22 Pursuant to the Court's instructions and the verdict form
23 with an answer of "No" to question 5, the jury was instructed
24 not to answer Question 6. Question 6 is unanswered as the
25 Court instructed.

1 Turning, then, to page 9, which is the final page of the
2 verdict form, I find that it is dated with today's date, and
3 it is signed by Ms. Lowery as the foreperson of the jury.

4 Ladies and gentlemen of the jury, let me poll you to make
5 sure that this verdict as I have read it into the record
6 unanimously reflects the agreement and decision of all eight
7 members of the jury.

8 If this is your verdict as I have read it, would you
9 please stand up?

10 Thank you. Please be seated.

11 Let the record reflect that all eight members of the jury
12 immediately rose and stood in response to the Court's question
13 to poll the jury. This confirms for the Court that this is
14 the unanimous verdict of all eight members of the jury. I
15 accept the jury's verdict and I will deliver the original
16 verdict form to the Courtroom Deputy at this time.

17 Ladies and gentlemen, that completes the trial of this
18 case. From the very beginning I have instructed you over and
19 over and over about your conduct, including telling you many,
20 many times not to discuss this case or communicate about this
21 case with anyone. I am releasing you from all the
22 instructions I've given you because I am discharging you as
23 jurors in this case, and since you have been discharged and
24 are no longer subject to those instructions from the Court,
25 you are absolutely free to discuss your service or anything

1 about this case, this trial, with anyone of your choosing. By
2 the same token, you are completely free not to discuss
3 anything about this trial or this case or your experience as
4 jurors. It is totally 100 percent up to you.

5 Now, I need to let you know about a long-standing
6 practice and custom in the Marshall Division of the Eastern
7 District of Texas, because it was this way more than 30 years
8 ago when I got out of law school and practiced law here, began
9 practicing law here. When a verdict's returned in this court
10 and is accepted by the Court and the jury's discharged, the
11 lawyers cannot initiate a consideration with you about this
12 case, and I can assure you the lawyers on both sides are very
13 anxious to know what you thought about this trial, how they
14 comported themselves, what suggestions or comments you might
15 have, but they can't initiate a conversation with you. You
16 can, though. Because you've now been discharged, you can
17 initiate a conversation with them if you choose to.

18 And the way that has developed over the many years that
19 that's been the practice here is that there's one way in this
20 building and there's one way out, and don't be surprised when
21 you go down those front steps if you don't find the lawyers in
22 this case standing on the sidewalk making themselves available
23 to you if you want to stop and have a conversation with them.
24 They are not going to stop you, they are not going to
25 interfere with you coming and going, they are not going to

1 initiate a conversation with you; they're just going to make
2 it easy for you if you choose to stop and initiate a
3 conversation with them.

4 If you want to do that--I understand it's quit raining
5 now--feel free to do that. If you don't want to do that,
6 you're under absolutely no obligation to do it. But don't be
7 surprised when you exit the building if you don't see some or
8 most of the lawyers outside on the sidewalk giving you an
9 opportunity to stop and talk to them if you choose to do it.

10 But again, let me stress, it is completely your decision,
11 and if you decide that you want to walk straight to your
12 vehicle and go home, nobody is going to stop you, nobody's
13 going to slow you down, and nobody's going to get in your way.

14 That's the way it's been for over 30 years here, because
15 I have participated in it as a lawyer, and I've seen it as a
16 judge, so I think I know what I'm talking about when I tell
17 you that's usually the way it works. So those are the rules.

18 And if you want to stop, they'll stay until midnight and
19 talk to you, I suppose, because I know they're interested in
20 what you thought about this trial. But you're not obligated
21 in any way. It is strictly 100 percent your own personal
22 decision.

23 Now, having covered that, ladies and gentlemen, there's
24 one other thing I want to ask of you, and this is in the
25 nature of a personal favor to me. In a moment you're going to

1 leave the jury box and you'll go back through the jury room as
2 you prepare to leave. As a personal favor to me, I'm going to
3 ask you not to immediately leave once you get to the jury
4 room. I'm going to ask you to wait there for just a minute so
5 that I can come into the jury room and I can look each one of
6 you in the eye and shake your hand and thank you personally
7 for your service as jurors in this case, because, quite
8 honestly, ladies and gentlemen, you've made a very real and
9 important sacrifice as good citizens to serve as jurors in
10 this case, and I believe that kind of public service warrants
11 the attention that only a handshake and a thank you
12 face-to-face can give you. And I'd like to do that, if you'll
13 give me that opportunity. Now that the verdict's been
14 accepted and you've been discharged as jurors, there's nothing
15 that prohibits me from talking with you directly, and I would
16 like to do that if you will give me that privilege.

17 I promise you--it's Friday evening, my wife's waiting for
18 me at home--it's not going to take me very long, and I'm not
19 going to hold you but for just a few minutes. But if you
20 would do me that honor, I'd like to thank you personally
21 before you leave.

22 With that, ladies and gentlemen, the trial in this case
23 is completed, the verdict has been accepted, the members of
24 the jury are excused, and counsel, likewise, you are excused
25 as well.

1 (The proceedings were concluded at 5:15 p.m.)
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1 I HEREBY CERTIFY THAT THE FOREGOING IS A
2 CORRECT TRANSCRIPT FROM THE RECORD OF
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES
5 FORMAT COMPLY WITH THOSE PRESCRIBED BY THE
6 COURT AND THE JUDICIAL CONFERENCE OF THE
7 UNITED STATES.

8
9 S/Shawn McRoberts

03/24/2023

10 _____ DATE _____
11 SHAWN McROBERTS, RMR, CRR

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